CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 370.

FRANKLIN McNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, AND THE GREENSBORO ICE AND COAL COMPANY, APPELLANTS,

vs.

SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

FILED AUGUST 11, 1905.

(19,872.)

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *Eastern District of North Carolina, To-wit:*

a circuit court of the United States for the fourth circuit and eastern district of North Carolina, begun and held at the courthouse, in the city of Raleigh, on the first Monday in December, 1904, it being the fifth day of the same month, in the year of our Lord one thousand, nine hundred and four.

Present: The Honorable Thomas R. Purnell, judge of the eastern district of North Carolina.

Among others were the following proceedings, to-wit:

On the 5th day of January, 1904, the following complaint was filed in this court.

2 *Original Bill. Filed Jan. 5th,* 1904.

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

In the Circuit Court of the United States for the Eastern District of North Carolina at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

v.

GREENSBORO ICE AND COAL COMPANY, and FRANKLIN MCNEILL, Samuel L. Rogers, and Eugene C. Beddingfield, Defendants.

Original Bill.

To the honorable the judges of the circuit court of the United States for the eastern district of North Carolina sitting in equity:

Your complainant, Southern Railway Company, a citizen of the State of Virginia, brings this, its bill of complaint against Greensboro Ice and Coal Company, and Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, members of the North Carolina corporation commission, all of whom are citizens of the State of North Carolina; and humbly complaining says:

I.

That your complainant, Southern Railway Company, is, and for more than eight years last past has been, a corporation created by and existing under and pursuant to the laws of the State of Virginia, and is a citizen and resident of the said State of Virginia, with its prin-

cipal office and place of business in the city of Richmond, in
3 the said State of Virginia. And that the said Greensboro Ice and Coal Company is a corporation created by and existing under the laws of the State of North Carolina and a citizen of the State of North Carolina, with its principal office and place of business in Greensboro in the said State. That the defendant Franklin McNeill is, and at all times mentioned in this bill, has been a citizen of the State of North Carolina and a resident of the eastern district thereof; and that the said Samuel L. Rogers is a citizen of North Carolina and a resident thereof, and that the said Eugene C. Beddingfield is a citizen of North Carolina and a resident of the eastern district thereof; that the said Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield are now acting or claiming to act as commissioners and members of the North Carolina corporation commission, and are exercising the powers and authorities of said North Carolina corporation commission, and all the rights conferred upon said commission under and by virtue of certain act of the General Assembly of the State of North Carolina passed at its session of 1899, entitled, "An act to establish the North Carolina corporation commission" Public Acts 1899, chap. 164, reference to which is hereby made as fully as if the same and every part thereof were herein fully set forth and also to the amendments thereto which appear in the public laws of North Carolina, reference to all of which amendments is hereby made as fully as if the same were herein set forth. That the subject matter of this suit now brought before this honorable court is a controversy between citizens of different States, and that the amount involved therein, exclusive of interest and costs,
4 exceeds the sum or value of $2,000.

II.

Your orator shows that it now owns, operates and controls in the State of North Carolina, and at the dates hereinafter mentioned owned, operated and controlled lines of railway, equipped with suitable rolling stock and motive power for the carriage of passengers and freights, United States mail and express matter, said lines extending through many portions of the State of North Carolina, and through other States of the United States. That your orator in conducting its railway operations through the State of North Carolina and other States of the United States is now, and was at all the times hereinafter mentioned, engaged in interstate commerce, and was and is charged with the carriage of the mails of the United States in and through North Carolina, from and to points within and without the State of North Carolina.

III.

That in the proper conduct of its business sometime in October, 1903, your orator transported over its lines to Greensboro in the State of North Carolina, four cars loaded with coal, consigned to the de-

fendant, Greensboro Ice and Coal Company, at Greensboro, North Carolina; that the said four cars which had been loaded at points outside of North Carolina were received by your orator from connecting lines of railroad at points outside of North Carolina, and were each transported over the said railroad lines of other companies and the lines of your orator in other States and in the State of North Carolina, as one continuous, unbroken journey through the several States to the said station of Greensboro. That the said four
5 cars of coal reached Greensboro, in the State of North Carolina, and your orator notified the defendant, Greensboro Ice and Coal Company that the said cars would be placed upon its track at Greensboro, North Carolina, upon which the public and other consignees were in the habit of receiving coal and other shipments, to-wit: its public team tracks, in order that they might be unloaded by the said defendant, Greensboro Ice and Coal Company, and that said cars were so actually placed on the said public team tracks of your orator at Greensboro and tendered to the defendant, Greensboro Ice and Coal Company for unloading upon the payment to your orator of the freight charges, then lawfully due upon the same, and certain charges for the use of said cars, in storing said coal caused by delay in unloading said cars, which delay was due to the wilful refusal of said Greensboro Ice and Coal Company to unload the same in accordance with the reasonable rules and proper regulations of your orator, which were well known to the said defendant, Greensboro Ice and Coal Company, at the time the coal was ordered to be shipped to it from the initial points in States other than North Carolina, where the coal was loaded upon the cars.

IV.

Your orator further shows that the defendant Greensboro Ice and Coal Company insisted and demanded that your orator should place said four cars of coal upon a certain private siding, spur track or switch leading into the private yards of the said defendant, and your orator declined to so deliver said cars, upon the ground
6 that it was and is now under no legal obligation, either by statute, contract, or by its rules, to make deliveries of cars at any other than the regular and ordinary places for unloading the same, to-wit: its public team tracks, or public coal-shute located at the said town of Greensboro, North Carolina, the same being amply sufficient and suitable for the purpose of unloading and being accessible for that purpose to the said defendant, Greensboro Ice and Coal Company, as it was to all other inhabitants of the said town. Your orator further declines to deliver the said cars or part with their possession until the freight and accrued demurrage charges had been duly paid.

V.

That the said cars of coal having been placed upon the said public team tracks of your orator at Greensboro, North Carolina, remained

there for a considerable period of time, the said defendant, Greensboro Ice and Coal Company declining to pay the freight charges and accrued demurrage or storage charges due to your orator upon the said cars, and refusing to receive and unload the said cars.

VI,

Your orator further shows that thereafter the defendant, Greensboro Ice and Coal Company, induced the above named defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield acting as the North Carolina corporation commission, and purporting to exercise the powers and authorities of that body, to issue an order dated October 31st, 1903, requiring your orator to de-
7 liver said four cars of coal upon the private siding, spur track, or switch of the said Greensboro Ice and Coal Company at Greensboro, North Carolina. That this order was procured without any notice to your orator, and without any opportunity for it to be heard or make any defence before said defendants, and thus your orator was deprived of its right to a hearing as guaranteed by the fourteenth amendment to the Constitution of the United States which provides and insures to every citizen of the United States due process of law in the protection of its rights.

VII.

That, thereafter, your orator filed exceptions to said order of said defendants purporting to act as the North Carolina corporation commission, which exceptions were subsequently heard and over-ruled by the said defendants, on December 9th, 1903, and the order of October 31st, was made permanent, and your orator has appealed from said order as allowed by law.

VIII.

That thereafter, the Greensboro Ice and Coal Company threatened and still threatens to bring suits against your orator to recover penalties and damages for the breach of the said order of October 31st, issued by the aforesaid defendants, McNeill, Rogers, and Beddingfield, purporting to act as said North Carolina corporation commission. That the Greensboro Ice and Coal Company are using all means within their power (with the consent and co-operation of the defendant commissioners or one or more of them, as complain-
8 ant is informed and believes) to force the com*com*plainant to submit to the unlawful and unconstitutional attempted regulations of its interstate commerce, by said defendant commissioners, and has threatened, that, if the complainant shall prosecute its appeal in the case above mentioned, the Greensboro Ice and Coal Company will at once institute suits against complainant for penalties, which it alleges the complainant has incurred in regard to the non-delivery of the cars aforesaid, and by its refusal to comply at

once with the orders of the said defendants, and will also institute divers actions against complainant for the recovery of punitive damages, claiming large amounts.

IX.

That section sixteen of said act of the General Assembly of North Carolina creating said corporation commission, provides, as follows:

"That if any railroad company doing business in this State shall, in violation of any rule or regulation provided by the commission aforesaid, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the same was done or where the plaintiff resides, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between the individuals, except that in case of wilful violation of law, such railroad companies shall be liable to exemplary damages."

X.

That the said defendants, McNeill, Rogers, and Beddingfield have also threatened to institute against your orator suits to recover penalties for disobedience of said order, rule or regulation, as complainant is informed and believes.

XI.

That section twenty-three of said act of the General As-
9 sembly of North Carolina provides,

"That any railroad or other company or corporation which violates any of the provisions of this act or refuses to conform to or obey any rule, order, or regulation of North Carolina corporation commission shall, in addition to the other penalties prescribed in this act, forfeit and pay the sum of $500, for each offence, to be recovered in an action to be instituted in the superior court of Wake county in the name of the State of North Carolina on relation of the North Carolina corporation commission, and each day such company or corporation continues to violate any provision of this act or continues to refuse to obey or perform any rule, order or regulation prescribed by said North Carolina corporation commission, shall be a separate offence."

That Greensboro Ice and Coal Company and the said co-defendants, McNeill, Rogers and Beddingfield have threatened and still threaten to institute numerous suits against your orator for the recovery of aforesaid penalties and damages and other penalties provided for in said act, and that under the construction of said act, placed upon the same by said defendants, your orator is laid open to numerous suits on account of its alleged refusal to deliver each of said cars for each day that your orator has so refused and declined to deliver said cars, that a great multiplicity of suits arising from the

non-delivery of said cars in accordance with said order, or regulation of said defendants, McNeill, Rogers, and Beddingfield is threatened and will ensue, and your orator will be greatly harassed, annoyed and put to much expense by reason of the conduct of said defendants in the institution and prosecution of said suits.

XIII.

Your orator further shows that it has a common defence to all of said threatened suits arising out of a question of law,
10 common to all of said suits; that is to say, your orator relies upon its right as a matter of law to be protected in its interstate commerce from all direct interference whatsoever, of said defendants, or any of them, or from any persons whomsoever, whether purporting to act under the authority of the laws of North Carolina or otherwise. Your orator further relies as a defence to said suits upon a question of law common to all of said suits, that is to say, it has undoubted legal right to conduct its business according to its reasonable rules and regulations, which it has full power and authority under the law to make. Your orator further says that it has a common defence to all of said suits involving a question of law common to all of said suits; that is to say, the protection of article XIV of the amendments to the Constitution of the
11 United States which provides that no person shall be deprived of life, liberty, or property without due process of law, and the attempt of said defendants to require orator to place its cars loaded with interstate traffic out of its possession upon a private spur track or siding before any liens thereon for freight or demurrage were paid would be depriving it of its property without due process of law. Orator further shows that it has a common defence to all of said threatened suits involving a common question of law in that the said corporation commission has no power to exercise as a single body the functions of judicial, executive and legislative departments of the government of North Carolina under the constitution of said State.

Your orator further shows that the right to conduct its interstate traffic, regulated and governed by reasonable rules, and to control and direct the delivery at its regular stations, of the interstate traffic which it carries over its lines to Greensboro and other places in North Carolina, and points throughout the United States, is of incalculable value to your orator, and that unless your orator can be protected in the exercise of such rights from numberless suits for penalties and damages which are threatened, not only by the aforesaid defendants, but by numerous other parties, at present unknown to your orator, who are misled by the orders, rules and regulations of said McNeill, Rogers and Beddingfield, your orator will be unable to safely conduct and carry on its interstate commerce in North Carolina, as well as in the other States through which its lines run, and your orator will be subjected to immense expense in the defense of said threatened suits.

Wherefore, your orator, being remediless in a court of law and being only able to obtain the relief which it is necessary for

12 it to have in a court of equity, to the end that the said defendants may, if they can, answer the several charges and allegations of this bill of complaint, but not under oath, answer under oath being expressly waived from each of them, prays:

1. That your honors may order the issuance of an injunction prohibiting and perpetually enjoining the defendants, McNeill, Rogers, Beddingfield, acting as said North Carolina corporation commission, and their and each of their successors in office, and the Greensboro Ice and Coal Company, its officers agents, attorneys and employés, from instituting or authorizing, or directing any others to institute any suit or suits, action or actions against Southern Railway Company, or any of its officers, agents or employés, founded and based upon the matters and things set forth in the foregoing complaint, for recovery of any penalty, or damages under and by virtue of any provision of the said act of the General Assembly of the State of North Carolina, Public Acts 1899, chap. 164, as amended by any subsequent act, or under or by virtue of any orders, rules or regulations of the said defendants, McNeill, Rogers, and Beddingfield, or either or any of them combined, or their successors in office, and restraining the said defendants, McNeill, Rogers, and Beddingfield, and any person holding the office of commissioner and member of said North Carolina corporation commission from in any wise interfering with Southern Railway Company in the conduct of its interstate business;

2. And your orator further prays that upon discovery of the persons at present unknown to your orator, who threaten to bring suits against your orator for recovery of penalties for the breach of orders, rules or regulations of said McNeill, Rogers and Beddingfield, affecting directly the conduct of the interstate commerce of your
13 orator, said persons may be made parties to this suit, and your orator may have leave to include them in the injunction granted by this honorable court.

3. And if in anything your orator is mistaken in its relief, then it prays for all such other, further and general relief as the premises may warrant and the law may allow.

4. May it please your honors to grant unto your orator not only the writ of injunction, but the writ of subpœna to be issued out of this honorable court directed to Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and Greensboro Ice and Coal Company, commanding them and each of them, under a penalty to be therein named and upon a day to be therein fixed, to appear in this honorable court and answer the premises and abide the further order and decree of the court.

And your orator will ever pray, etc.

This is the first application for an injunction in this case.

SOUTHERN RAILWAY COMPANY,
By F. H. BUSBEE &
C. B. NORTHROP, *Solicitors.*

W. A. HENDERSON,
C. B. NORTHROP, &
F. H. BUSBEE & SON, *Counsel.*

14 UNITED STATES OF AMERICA, *District of Columbia:*

This day came J. M. Culp, who being duly sworn, doth state that he is an officer, towit: fourth vice president of Southern Railway Company; that the foregoing facts set out in the above bill are true to the best of his knowledge, information and belief.

J. M. CULP.

Sworn to before me this 4th. day of January, 1904.

PEARCE HORNE, JR.,
Commissioner of Affidavits for the State of North Carolina in the District of Columbia.

Bill returned January 7th, 1904. Endorsed "Received Jan'y 6th 1904. Executed Jan'y 6th, 1904. By delivering a copy hereof to M. W. Thompson, treasurer of the Greenbboro Ice and Coal Company.

J. M. MILLIKAN,
U. S. Marshal.
By R. C. CHAUDLEY,
Office D. M.

For marshal's return for bill for Franklin McNeill *et al.* see equity subpœna page 24.

15 *Prosecution Bond. Filed January 5th,* 1904.

UNITED STATES OF AMERICA:
Circuit Court, at Raleigh, Fourth Circuit Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY
vs.
GREENSBORO ICE AND COAL COMPANY, F. MCNEILL, S. L. ROGERS, & E. C. Beddingfield.

Prosecution Bond.

Know all men by these presents, that we, Southern Railway Company, as principal and A. B. Andrews, Jr., as surety, are held and firmly bound unto the defendants in the above entitled action in the sum of two hundred dollars, to the payment of which we bind ourselves firmly by these presents. Sealed with our seals and dated this 5th day of January, 1904.

The condition of the above obligation is such, that whereas the plaintiff in the above named cause has brought its action against the

said defendants therein: Now, if the said plaintiff shall prosecute its said action with effect, or, in case it fail therein, shall well and truly pay all such costs as shall be awarded and recovered against the said plaintiff in said action, then the above obligation is to be void, otherwise it is to remain in full force and effect.

SOUTHERN RAILWAY COMPANY, [SEAL.]
By F. H. BUSBEE, *Att'y*, [SEAL.]
A. B. ANDREWS, JR. [SEAL.]

Taken and acknowledged before me, this 5th day of Jan., 1904.
H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFSKI, *D. C.*

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

A. B. Andrews, Jr., being duly sworn says: That he is the surety whose name is signed to the within undertaking; that he is a resident of, and has property within, the State of North Carolina
16 to the amount of two hundred dollars, not exempt from execution, and in excess of his debts and liabilities.

A. B. ANDREWS, JR.

Sworn and subscribed before me, this 5th day of January, 1904.
H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFSKI, *D. C.*

17 *Restraining Order, Filed Jan. 5th*, 1904.

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh. Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
GREENSBORO ICE & COAL COMPANY, FRANKLIN MCNEILL, SAMUEL L. ROGERS, and EUGENE C. BEDDINGFIELD, Defendants.

Order.

This cause coming on upon the original bill, treated as an affidavit upon motion of complainant's counsel and upon the facts and for the reasons set forth in the bill,

It is ordered and decreed that the defendants, Greensboro Ice and Coal Company and Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, members of the North Carolina corporation commission, show cause before me, sitting as judge of the United States circuit court, at Raleigh, on the ninth day of February, 1904, why

the order of injunction until the final hearing shall not issue as prayed for in the bill.

And upon the complainant's entering into bond in the sum of five hundred dollars, with justified surety, conditioned to save harmless the defendants, if it shall hereafter be *adjusted* that the restraining order was wrongfully issued, the defendants McNeill, Rogers and Beddingfield, acting as the North Carolina corporation commission and the Greensboro Ice & Coal Company, its officers, agents, attorneys and employees and each of them, be restrained and enjoined from instituting, or authorizing or directing any other persons to institute any suit or action against the complainant, Southern Railway Company, or any of its officers, agents or employees, based upon the matters and things set forth in the bill for the recovery of any penalty or damages, under public acts of North Carolina, 1899, chapt. 164, or by virtue of any order, rules or regulations of the defendants McNeill,
Rogers and Beddingfield, or their successors in office, and that
18 the said defendants McNeill, Rogers, and Beddingfield be restrained and enjoined from interfering in any manner with the Southern Railway Company in the conduct of its interstate business.

A copy of this order served with the subpœna and copy of the bill shall have the force and effect of a writ of injunction.

THOS. R. PURNELL,
U. S. Judge, &c.

Jan. 5th 1904.

Restraining order returned and filed Jan. 7th 1904. Indorsed "Received Jan. 6th, 1904. Executed by delivering a copy hereof to M. W. Thompson, treasurer of the Greensboro Ice & Coal Company, in person. This Jan. 6th, 1904.

J. M. MILLIKAN,
U. S. Marshal
By A. C. CHAUDLEY,
Office D. M."

For marshal's return of service of restraining order directed to Franklin McNeill, *et al.* see equity subpœna page 24.

19 *Restraining Order Bond. Filed Jan. 5th,* 1904.

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh. Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
GREENSBORO ICE & COAL COMPANY, FRANKLIN MCNEILL, SAMUEL L. ROGERS, and Eugene C. Beddingfield, Defendants.

Bond.

Know all men by these presents that we, Southern Railway Company, as principal, and A. B. Andrews, Jr. as surety, are held and firmly bound unto Greensboro Ice & Coal Company, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield in the sum of five hundred dollars, for the payment of which we do hereby bind ourselves heirs, executors and successors. Witness our hands and seals this January 5, 1904. The condition of this obligation is such that whereas a restraining order has been issued in the above entitled cause restraining the defendants from instituting certain suits against the Southern Railway Company and from interfering with the interstate commerce of the said Southern Railway Company, as will fully appear in said order,

Now therefore if the defendant, Southern Railway Company, shall pay all such damages not exceeding five hundred dollars, as may hereafter be adjudged against it, in the event it shall be hereafter *be* determined that the said restraining order was wrongfully or improvidently issued, then this obligation shall be void, otherwise to remain in full force and effect.

SOUTHERN RAILWAY COMPANY, [SEAL.]
By F. H. BUSBEE.
A. B. ANDREWS, JR. [SEAL.]

20 WAKE CO., *ss:*

A. B. Andrews Jr. being duly sworn doth say that he is worth the sum of one thousand dollars ($1,000) above his debts, liabilities and exemptions allowed by law.

A. B. ANDREWS, JR.

Sworn and subscribed before me this 5th day of January, 1904.
F. H. BUSBEE,
Notary Public.

21 *Equity Subpœna. Issued and Returned Jan. 7, 1904.*

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

Circuit Court, at Raleigh, Fourth Circuit.

The United States of America to Greensboro Ice and Coal Company

We command you, and every of you, that you appear before th judges of our circuit court of the United States of America, for th eastern district of North Carolina, at the office of the clerk of sai court, in the city of Raleigh, in said district, on the ninth day i the month of February next, to answer the bill of complaint o Southern Railway Company a citizen and resident of the State o Virginia, filed in the clerk's office of said court, in said city o Raleigh, then and there to receive and abide by such judgment an decree as shall then or thereafter be made, upon pain of judgmen being pronounced against you by default.

To the marshal of the eastern district of North Carolina to exe cute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Su preme Court of the United States, at Raleigh, in said district, the 5th day of January, 1904, and in the 128th year of the Independ ence of the United States.

Issued the 5th day of January, 1904.

H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFSKI, *D. C.*

22

Memorandum.

The within named defendants are notified that, unless they enter their appearance in the clerk's office of said circuit court, at Raleigh, as aforesaid, on or before the day to which the within writ is re turnable, the complaint will be taken against them, as confessed, and a decree entered accordingly.

H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFSKI, *D. C.*

Subpœna returned Jan. 7th endorsed. "Received Jan. 6th 1904. Executed Jan. 6th 1904. By delivering a copy hereof to M. W. Thompson, treasurer of the Greensboro Ice & Coal Company in person.

J. M. MILLIKAN, *U. S. M.*,
By R. A. CHANDLEY, *O. D. M.*"

23 *Equity Subpœna. Issued and Returned Jan. 15th*, 1904.

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

Circuit Court, at Raleigh, Fourth Circuit.

The United States of America to Franklin McNeill, Samuell L. Rogers, and Eugene C. Beddingfield, Raleigh, N. C.:

We command you, and every of you, that you appear before the judges of our circuit court of the United States of America, for the eastern district of North Carolina, at the office of the clerk of said court, in the cith of Raleigh, in said district, on the ninth day in the month of February next, to answer the bill of complaint of Southern Railway Company a citizen and resident of the State of Virginia, filed in the clerk's office of said court, in said city of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of North Carolina to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the 6th day of January, 1904, and in the 128th year of the Independence of the United States.

Issued this 6th day of January, 1904.

H. L. GRANT, *Clerk.*

24 *Memorandum.*

The within named defendants are notified that, unless they enter their appearance in the clerk's office of said circuit court, at Raleigh, as aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them, as confessed, and a decree entered accordingly

H. L. GRANT, *Clerk,*
By GEO. L. TONNOFFSKI, *D. C.*

Subpœna returned Jan. 15th 1904. Endorsed. "Received Jan. 6th, 1904, and executed Jan. 6th, 1904 upon Franklin McNeill, chairman and Samuel L. Rogers by delivering to each of them a copy of eq. sub. restraining order and bill at Raleigh, N. C. and executed January 7th 1904 upon E. C. Beddingfield by delivering to him a copy of eq. sub. restraining order and bill at Raleigh, N. C.

H. C. DOCKERY, *U. S. M.,*
By J. T. SHARP, *O. D. M.*"

25 *Answer of Franklin McNeill, Sam'l L. Rogers & Eugene C. Beddingfield.*

Filed Feb. 8th, 1903.

In the Circuit Court of the United States, for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity

SOUTHERN RAILWAY COMPANY, Complainant,
against
GREENSBORO ICE AND COAL COMPANY, and FRANKLIN MCNEILL, Samuel L. Rogers, and Eugene C. Beddingfield, Defendants.

The Joint and Several Answer of Franklin McNeill, Eugene C. Beddingfield, and Samuel L. Rogers to the Bill of Complaint of the Southern Railway Company, Complainant.

These defendants, reserving to themselves all right of exception to the said bill, and especially protesting that this court has no jurisdiction of these defendants, or the subject matter of this suit, for answer say:

That it is true that the said defendants are members of the North Carolina corporation commmission, and all of them are citizens of the State of North Carolina, and the eastern district thereof, except Samuel L. Rogers, who is a citizen and resident of the western district of North Carolina.

1.

That it is true that the complainant is, and for several past, has been a corporation in, and existing under the laws of the State of Virginia, and is a citizen of the said State of Virginia, with its princi*ple* office in the city of Richmond, and in the said State of Virginia. And it is also true that their co-defendant, the Greensboro Ice and Coal Company, is a corporation created and existing
26 under the laws of North Carolina, and is a citizen of the State of North Carolina, with its princi*ple* office and place of business in Greensboro, North Carolina, which said city is within the western district of said State.

That it is also true that these defendants are now acting as commissioners and members of the North Carolina corporation commission, and are exercising the powers and authority of the said North Carolina corporation commission, under and by virtue of the act referred to in paragraph 1 of the said bill. These defendants aver that they are rightfully acting as members of the said corporation commission; and that by virtue of the express terms of the act of the General Assembly of North Carolina (section 1, chapter 164, Public Laws 1899) the said commissioners and their successors in office are created and constituted, and now constitute*d*, a court of record known as the North Carolina corporation commission; and as

such have jurisdiction of all subjects embraced in the said act, and the laws amendatory thereof. That it is true that the subject matter of this suit is a controversy between citizens of different States; but it is not true, as alleged in said paragraph 1 of the bill, that the amount involved therein, exclusive of interest and costs, exceeds the sum or value of $2000, as these defendants are informed and believe.

2.

That it is true, as alleged in paragraph 2 of said bill, that the complainant company operates and controls rolling stock and motive power for the carriage of passengers and freight; the United States mail and express matter, and that its lines extend through portions of the State of North Carolina and through other States of the United States. And it is also true, as therein alleged, that the complainant is, and was at the time mentioned in said bill, engaged in inter-state commerce and in the carriage of mails of the United States, in and through North Carolina, and from and to points, within and without the State. But these defendants aver that the subject matter of this controversy does not involve any infringement of the commerce clause of the Constitution of the United States or of any act of Congress thereunder.

27

3.

That it is true, as alleged in paragraph 3 of the bill, that the complainant company transported over its lines to Greensboro in the State of North Carolina, sometime in October, 1903, four cars loaded with coal, consigned to the Greensboro Ice and Coal Company at Greensboro, North Carolina. And it is true, as these defendants are informed and believe, that said cars were transported upon connecting lines outside of North Carolina and over the complainant's lines to Greensboro, North Carolina. It is also true that the said four cars of coal arrived at Greensboro, and that complainant notified the defendant, the Greensboro Ice and Coal Company, that said cars would be placed upon complainant's track in Greensboro, to wit, its public team track, and that said cars were so actually placed for unloading by the Greensboro Ice and Coal Company, upon payment of the freight due upon the same, and certain charges for the use of said cars in storing coal caused by delay in unloading said cars. But these defendants aver that the delay was not due to the willful and unlawful refusal of the defendants, The Greensboro Ice and Coal Company, to unload the said cars, in accordance with the reasonable rules and proper regulations of the complainant. On the contrary, these defendants aver that the Greensboro Ice and Coal Company refused too unload the said coal from the said four cars for the reason that there was a siding about three hundred feet long running from the complainant's main line to the yards of the Greensboro Ice and Coal Company, a portion of which had been constructed by the complainant and other parties for the conven-

ient handling of consignments of carload freight, and the remainder of the said siding had been constructed by the complainant and the Greensboro Ice and Coal Company for the purpose and with the agreement, express or implied, that all consignments of wood or coal to the said Greensboro Ice and Coal Company, shipped over the complainant's road, should be delivered to the said consignee upon the said side track; and this was done in conformity with section 1, rule 10 of the North Carolina Car Service Association, which was acting as an agent for, and under the direction of the complainant, which said section is as follows:

"SECTION 1. Car containing freight to be delivered on carload delivery tracks or private sidings, shall be placed on tracks
28 designated immediately upon arrival, or as soon thereafter as possible. When delivery cannot be made on specially designated yards or tracks (on account of the tracks being fully occupied, or for any other reason beyond the control of the carriers) delivery shall be made at the nearest available point." These defendants further aver that the refusal and failure of the complainant to place the said four cars of coal on said siding was not because the circumstances attending the delivery of the said cars came within any of the exceptions in the said section above quoted; but because of the refusal of the defendant, the Greensboro Ice and Coal Company, to pay certain charges for demurrage claimed to be due on other cars theretofore consigned and delivered to the said Greensboro Ice and Coal Company upon the said siding, pursuant to the aforesaid agreement and rule of the complainant. These defendants further say that under the said siding were constructed certain bins, with the consent and approval of the complainant, which facilitated the unloading of the coal directly from the cars into the said bins of the Greensboro Ice and Coal Company, and that this arrangement was in fact, a convenience and advantage to the said complainant, as well as to the said Greensboro Ice and Coal Company.

4.

That it is true as alleged in paragraph 4 of the bill that the defendant, The Greensboro Ice and Coal Company, demanded that the complainant should place said four cars of coal upon the said siding or switch track running into the yards of the said Greensboro Ice and Coal Company, and that complainant refused to so deliver said cars on said siding. But these defendants are informed that the reason for such refusal was not that stated in said paragraph 4, but because the said defendant, The Greensboro Ice and Coal Company, had refused to pay certain charges for demurrage on thirteen cars of coal and wood therefore consigned and delivered to the said Greensboro Ice and Coal Company, and these defendants aver that the complainant could have delivered said four cars on said siding without additional expense to itself and that such delivery would have conduced to the average of others consignees at the station in

Greensboro for the reason that thereby its public team track would have been left open for cars containing consignments to other inhabitants of the said city; and such delivery on id siding, would have enabled the defendants, The Greensboro Ice d Coal Company, to unload said four cars more expeditiously, and e said cars would thereby have been subject to more speedy use by e complainant. These defendants further say that they are in-rmed and believe that immediately upon notice to the defendants, ie Greensboro Ice and Coal Company of the arrival of the said ur cars, the Greensboro Ice and Coal Company offered to pay the eight thereon if the complainant would indicate its intention to ace the said cars on the said siding, after payment of freight. And e freight on the said four cars of coal was thereafter paid by the reensboro Ice and Coal Company and the complainant still refused place said cars on the said siding.

5.

That it is true, as alleged in paragraph five of the bill, that the id four cars of coal, having been placed upon the said public team ack, remained there for several days; but it is untrue that the reensboro Ice and Coal Company declined to pay freight charges ereon and it denied that any demurrage or storage charges were ie on account of said four cars; and these defendants believe that ey were correct in such denial; and these defendants say that ough the defendant, The Greensboro Ice and Coal Company, re-sed to receive and unload the said four cars on the public team ack, it was willing and anxious to receive and unload the same with-t delay upon the placing of the said four cars on the said siding as ey had the right, in the opinion of these defendants, to demand.

6.

That upon the written request of the Greensboro Ice and Coal Com-ny, these defendants, acting as the North Carolina corporation and ercising their powers and authority as members of that body, is-ed an order, dated October 31, 1903 requiring the complainant to ace said four cars of coal upon the said siding or switch track at reensboro, North Carolina. They say, hovever, that said order was not issued without notice to the complainant as alleged in said paragraph; but on the contrary, notice was given by telephone to P. R. Albright, manager of the North Carolina ar Service association, which association was acting in conjunction th and as the agent of the complainant in respect to cars delivered the company to points within the State of North Carolina. And al notice was also given to A. B. Andrews, first vice president of e complainant company, and the general manager of its business this State. That the said order of October 31, 1903, appears in e transcript hereto attached and marked Exhibit "A." And ese defendants aver that the matters of fact set forth in the said

order are true according to their best knowledge, information and belief; and these defendants refer to the said order as a part of this answer. These defendants further say that the said order of October 31, 1903 was duly served on the said complainant by leaving a copy of the same with the said A. B. Andrews, the proper officer of the complainant company, in order that the said company might have full opportunity to except to the same. These defendants further say that the issuing of the order in the manner hereinbefore specified was in accordance with the practice of the corporation commission authorized by the act of the General Assembly of the State creating the same; and that time was given to the complainant company to file exceptions to the order if it should see proper to do so. And these defendants aver that the complainant did file exceptions to the said order and the same were heard, as hereinafter set forth, and thus a day in court was given to the complainant, and these defendants are advised that the complainant was not, therefore, deprived of any right guaranteed to it by the 14th amendment to the Constitution of the United States.

7.

That it is true as alleged in said paragraph 7 of the bill that the complainant filed exceptions to the said order of October 31, 1903, and that the said exceptions was subsequently heard and overruled by these defendants, acting as the North Carolina corporation commission, and that said order was made permanent, and the complainant appealed from the said order. That the facts in respect to the said exceptions, and the hearing thereof by the North Carolina
31 corporation commission are embodied in the record of the proceedings had in the matter by the said commission, a full and complete transcript of which record appears in the exhibit heretofore referred to, marked "A" and made a part of this answer. That after the issuance of the said order of October 31, 1903, towit, on November 2nd, following, the complainant, by its attorneys, Charles Price, F. H. Busbee and Robert C. Strong, filed exceptions to the said order, and the same were heard upon testimony offered by the complainant, as well as by the defendant, The Greensboro Ice and Coal Company, and after argument of counsel for both sides, these defendants, as the North Carolina corporation commission, by its chairman, signed an order, overruling the exceptions of the complainant, and giving the relief prayed for by the Greensboro Ice and Coal Company. The said exceptions, and the ruling of the corporation commission and the notice of appeal by the complainant company, fully appear in the record hereto attached, and marked Exhibit A. And these defendants refer to said exceptions, findings, and notice of appeal, which, together with the order of October 31, 1903, and the return of service thereof, constitute the record of the proceedings had in the matter in the said controversy by the North Carolina corporation commission, sitting as a court of record. And

these defendants aver that as a record of said court, the same imports verity; and they further say that all the facts stated in the order, signed December 10th, 1903 are true. These defendants further aver that the conduct of the matter in controversy, and all the proceedings had in relation thereto, were in accordance with the practice of the North Carolina corporation commission as a court, and in conformity with the powers conferred upon it by the laws of North Carolina creating the commission. And they further say that they are advised that the voluntary appearance of the complainant as a party, and the filing of the said exceptions, and asking that the order of October 31, should be revoked or annulled, was in law a waiver of any alleged irregularities or illegalities in respect to the order of October 31st and the order of December 10th affirming the same.

32

8.

That in respect to the allegations of paragraph 8 of the bill these defendants say they have no knowledge or information with reference to suits for penalties or damages threatened by the defendant, The Greensboro Ice and Coal Company, for the purposes alleged in said paragraph; and these defendants say that if such threats are made it is without the consent and co-operation of these defendants or any one of them, and these defendants further aver that they are ignorant in respect to the means used by the defendant, The Greensboro Ice and Coal Company, to force the complainant to submit to the regulations contained in the said orders of these defendants. And these defendants deny that the said regulations are unlawful as interfering with inter-state commerce or otherwise, but aver that they are, in their opinion, justified by the facts of the case, and the law applicable thereto.

9.

That the allegations contained in paragraph nine of the bill are admitted.

10.

That it is untrue, as alleged in paragraph 10 of the bill, that these defendants have threatened to institute suits against the complainant to recover penalties for disobedience to the said orders and regulations; but they admit that, in a conversation with an attorney for the car service association (who signed said exceptions because said car service is agent of the complainant) and possibly with P. R. Albright, the manager of said association, one or more of these defendants said that if the complainant violated the law relating to the matter in controversy, the commission would be compelled to enforce the law.

11.

That section 23 of the act of the General Assembly of North Carolina is correctly set forth in paragraph 11 of the bill; but

33 these defendants deny that they have threatened or still threaten to institute any suits for penalties or damages against the complainant, except as set forth in the preceeding paragraphs of this answer. These defendants aver that the only penalty or suits for penalties which can arise upon a construction of the said act by these defendants, are such as provided for in the act of 1899 and the laws amendatory thereof, and as to any other penalties or suits, these defendants have no knowledge or information. That any action which these defendants would be authorized to institute or would institute for any violation of the order referred to in the bill, would be in the name of the State of North Carolina and solely for the use and benefit of the State of North Carolina by virtue of the provisions of the act referred to in the bill.

12.

That in respect to the allegations of paragraph 12 of the bill (incorrectly numbered 13) these defendants are advised that the same are statements of law or legal inference to which it is not material or incumbent upon these defendants to make answer. The only action that these defendants might regard it as incumbent upon them to institute, are such as are provided for in the said act of 1899 creating the North Carolina corporation commission and the laws amendatory thereof. These defendants are advised that the orders made by them hereinbefore referred to do not constitute an interference with interstate commerce as alleged in said paragraph 12; nor with the right of the complainant to conduct its business according to its reasonable rules and regulations except so far as the corporation commission has the right and power to control its rules and regulations by virtue of said act creating the corporation commission, and the amendment thereto contained in chapter 342, Public Laws 1903, whereby the power is expressly conferred upon the North Carolina corporation commission by sub-section 26 "to make rules governing railroad companies in the placing of cars for loading and unloading, and in fixing time limit for the delivery of freights after the same have been received by the transportation companies for ship-
34 ment." And these defendants further say that, having full power to provide for placing cars for unloading, and in conformity with the rules of the said North Carolina corporation commission, the orders complained of in the bill were in strict conformity to the law, and finally adjudged and made after the complainant campany had full opportunity to make defence as to its alleged rights in the premises.

These defendants, as representing the North Carolina corporation commission deny that they have attempted to exercise the functions of the judicial, executive and legislative departments of the State government of North Carolina as alleged in said paragraph 12; but they have only exercised such powers in this behalf as are conferred upon the said commission by the laws of North Carolina as con-

strued by the supreme court of the State. And these defendants further deny that they have attempted to interfere with the interstate traffic of the complainant or to control and direct the delivery of consignments under such traffic, except so far as they had the power to do, representing the said commission, and as it was their duty to do according to their best understanding of such duty for the convenience of the public of Greensboro and the defendants, The Greensboro Ice and Coal Company as hereinbefore alleged. These defendants further say that they have no means of knowing what suits for penalties and damages the complainant apprehends may be brought by others than the defendant, The Greensboro Ice and Coal Company, or which may be authorized by these defendants under the said law creating the corporation commission; but they deny that they are responsible for any such suits, and say that if the complainant shall be subjected to any such suit or suits it will be its own fault for disobedience of the lawful regulations and orders of the North Carolina corporation commission.

11.

Further answering these defendants say: That as members of the North Carolina corporation commission they are officers of the State of North Carolina, and as such they are advised that they cannot be lawfully enjoined from causing actions to be instituted in the name of the State of North Carolina for penalties incurred for the violation of their lawful orders or the provisions of the statute.

And these defendants, having fully answered, pray to be
35 hence dismissed with their reasonable costs and charges in this behalf incurred.

ROBERT D. GILMER,
Attorney Gen'l.

BATTLE AND MORDECAI,
Counsel for Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield.

In the Circuit Court of the United States for the Eastern District of North Carolina at Raleigh, Fourth Circuit.

The defendants Franklin McNeill, Eugene C. Beddingfield, defendants in the above suit, being duly sworn before me H. L. Grant, clerk of the said court, make oath each for himself; that the facts stated in the foregoing answer to be true of his own knowledge, are true, and that those, otherwise stated, he believes to be true.

FRANKLIN McNEILL.
E. C. BEDDINGFIELD.

Sworn to and subscribed before me this 8th day of February 1904.

H. L. GRANT, *Clerk.*
By GEO. L TONNOFFSKI, *D. C.*

36 EXHIBIT "A."

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Saml. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, clerk.

RALEIGH, N. C., *Oct.* 31*st*, 1903.

THE GREENSBORO ICE & COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

This cause coming on to be heard upon complaint and after notice to the defendant and an appearance by them, and it being made to appear to the commission by the plaintiff that four cars of coal, consigned to the complainant, have been conveyed to Greensboro by the Southern Railway Company and that said cars are now and have been on the yards of said railway company for several days, and that the agents of said company were requested by said consignees to place said cars for unloading soon after their arrival on a side track built at the expense of and by said complainant and said railway company to facilitate the loading and unloading of complainant's freights. And that said consignees offered to pay the freight charges due on said cars of coal if the railway company would indicate their willingness to place them as requested by consignee; and it further appearing that the said railway company have refused to place the said cars as requested and insist that they will place said cars only on public team tracks; and it further appearing that said cars of coal can be unloaded by consignees in much less time and at much less expense on the track constructed for that purpose than on public team tracks and at no greater expense to the railway company; and it further appearing that the cause assigned by the Southern Railway for its refusal to place cars as requested by consignees is insufficient, namely: That consignee refused to pay certain demurrage charges which the railway company claims accrued
37 on other cars while on public team tracks of said railway company, and which charges the consignees dispute and allege to be just:

It is, therefore, ordered that the Southern Railway Company upon the payments of the freights due on said cars of coal and within forty-eight hours after service of this order, place the four cars of coal consigned to the Greensboro Ice & Coal Company on tracks provided by complainant and defendant for the loading and unloading of the freights of the complainant to the end that the same may be unloaded and the complainant receive their freights.

FRANKLIN McNEILL,
Chairman N. C. Corporation Commission.

Served on A. B. Andrews, first vice-president, Southern railway, at 11.50 o'clock a. m., Saturday morning Oct. 31st, 1903, by reading to him and leaving with him copy of within order.

This Oct. 31st, 1903.

H. C. BROWN,
Clerk North Carolina Corporation Commission.

38 *Exceptions.*

To the honorable the North Carolina Corporation Commission, Raleigh, North Carolina.

The Southern Railway Company, a corporation existing under and by virtue of the laws of the State of Virginia, files with your honorable board, its exceptions to the particulars that it objects to your order, or judgment, of date October 31st, A. D., 1903, relative to the placing of the four cars of coal involved upon the private track of the Greensboro Ice & Coal Company in Greensboro, North Carolina, and states the grounds thereof as follows:

Exception No. 1. That the side track of the Greensboro Ice & Coal Company is the private property of that company with the exception of the rails, and is under the control of that company and built by that company for its own use and convenience and not for the use or convenience of the Southern Railway Company that to make the said side track more useful and profitable to said Coal & Ice Company, that company caused the track to be gradually raised so that the cars of coal could be dumped into bins made under said track with the least inconvenience to the said Coal & Ice Company; that during the construction of this work, and with no default on the part of the Southern Railway Company, certain demurrage charges accrued, under order No. 36, rules of your honorable board, on five carloads of coal and on eight carloads of wood, amounting in all to one hundred and forty-six dollars ($146.00), and under promise to pay said amount, upon which the Southern Railway Company relied and acted, the said coal & ice company induced the Southern Railway Company to place the said car loads of coal and wood upon the said private side track, and said coal & ice company have since refused to pay said demurrage charges, though several times requested and demanded by the Southern Railway Company to do so; that the Southern Railway Company thereupon refused and still refuses to place any more cars of freight upon the private side-track of the coal & ice company, and to extend them credit or part with their legal lien upon the four car-loads of coal ordered placed by your honorable board, or with their legal lien upon any goods, wares or mer-
39 chandise, until all freight, demurrage; or other charges have been fully paid, which the said railway company submits it has the right to do.

Exception No. 2. That the Southern Railway Company is ready

and willing, and has repeatedly offered to place said four cars o coal and other cars of merchandise accessible on its public team, o delivery track in the city of Greensboro, N. C., and has placed sai cars accessible as aforesaid, but the said coal & ice company refuse to so receive them. The Southern Railway Company contends an insists that the said coal & ice company has not any superior righ to the delivery of their goods, wares and merchandise, and that it i justified in refusing to place cars of coal and ice company upon it private siding or tracks, and thus part with their property.

Exception No. 3. That the said order or judgment herein excepte to is contrary to the fourteenth amendment to the Constitution o the United States, in that it deprives the Southern Railway Com pany of its property without due process of law, and denies to it th equal protection of the law for that,

A. It requires the railway company to part with the lien given i by law upon all goods, wares and merchandise until the freight an demurrage and all other lawful charges are paid.

B. It requires the Southern Railway Company to give or exten credit to the said coal & ice company which it is unwilling to do.

C. It is an adjudication of your honorable board without com plaint and answer required by your own rules of practice and with out legal or any sufficient evidence before you necessary for the sai judgment to be entered, and upon which these exceptions are based

Exception No. 4. That the said order or judgment herein excepte to is contrary and is repugnant to the Constitution of the Unite States as an attempted regulation of interstate commerce, and to certain act of Congress known as the interstate commerce act, i that the four car-loads of coal, the subject of said order or judgment were shipped to said coal & ice company at Greensboro, from point in the State of Tennessee and the State of Virginia, and is an inter ference by your honorable board with interstate shipments.

40 Wherefore, the Southern Railway Company prays that sai order herein excepted to be reviewed and vacated.

Respectfully submitted.

This November 2nd, 1903.

SOUTHERN RAILWAY COMPANY,
By CHARLES PRICE,
E. H. BUSBEE,
ROBERT C. STRONG,
Counsel for Southern Railway Company.

41 North Carolina Corporation Commission.

RALEIGH, N. C., *Dec. 10th*, 1903.

STATE OF NORTH CAROLINA on the Relation of the NORTH CAROLINA CORPORATION COMMISSION.

GREENSBORO ICE & COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

This cause coming on to be heard on exception by the Southern Railway Company, and evidence offered thereon by both parties the following facts are found;

The Greensboro Ice & Coal Company, jointly with the Southern Railway Company, constructed a side track from the Southern railway into the coal and wood yard of the Greensboro Ice & Coal Company, at Greensboro, and on the end and a part of this track within the yard of the Greensboro Ice & Coal Company is a trestle with bins underneath to facilitate the delivery of car-loads of coal. This side track is about 300 ft. long.

Between the 17th and 20th of October four cars of coal were transported to Greensboro, consigned to the Greensboro Ice & Coal Company. The Greensboro Ice & Coal Co. had a standing order with the Southern Railway to place all of their cars of freight on this side track, and offered to pay the freight on these four cars if assurance was given that the cars would be so placed.

The Southern Railway refused to place said cars on this side track, as requested by the Greensboro Ice & Coal Company, but offered to place them on public team track and did place them on public team track.

The four cars of coal were brought from points beyond the State.

42 The Southern Railway Company, on the 12th of October, 1903, issued notice to Greensboro Ice & Coal Company as follows:

"Please take notice that commencing 12:00 noon, October 17th 1903, this company will decline to switch any cars to your private siding, in the yards of your Company at Greensboro, N. C., and will only make delivery to you on the public team tracks of this Company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations declining to pay reasonable charges for the use of cars that have been detained before unloading on your private track above referred to and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control."

There was at that time, to-wit: The 12th of October, 1903, and is still pending, a controversy between Greensboro Ice & Coal Co. and

Southern Railway about certain demurrage charges. The South
Railway claimed that Greensboro Ice & Coal Company owed t
$146.00 demurrage on 13 cars of coal and wood. Greensboro I
Coal Company denied that they owed this or any other sum to So
ern Railway on account of demurage. The facts in regard to
charge are as follows: For some years there had been a side track
structed jointly by the Greensboro Ice & Coal Company and So
ern Railway into the former's coal and wood yard at Greensb
The Greensboro Ice & Coal Company handles over 200 car-load
coal per annum; and to expedite the delivery and furnish pr
facilities for delivery of coal, Southern Railway Company agreed
the rails be removed from the end of the portion of this side t
within the coal and wood yards, and that coal bins might be
structed under the track and the track elevated and placed upo
trestle. This work was begun September 8th, 1903, and finis
October 1st, 1903. Greensboro Ice & Coal Company furnished
of the material other than the rails and did all of the work ex
laying and placing the rails.

While the above repair was in progress, fourteen cars of freig
consisting of wood and coal, consigned to Greensboro Ice & Coal C
pany, were transported to Greensboro by the Southern
way.

43 Only one of these cars was ever placed at an accessible p
for unloading, and this one was unloaded promptly. Gre
boro Ice & Coal Company designated a side track nearest to their
and wood yard, being part of the side track leading into said y
but outside of their enclosure, as the place at which they desired
cars placed for unloading. Southern railway did not place th
thirteen cars as requested nor at any other accessible point during t
period. The cars could have been placed on track designated.
for other persons were placed on this track during this period.

The repair on the side track above mentioned was finished Octo
1st, and nine of the thirteen cars above mentioned were placed o
by the Southern railway and emptied and returned by the Gre
boro Ice & Coal Company within twenty-four hours thereafter.
remaining four cars were not placed on this side track for about
days, but each one of them was unloaded within three or four ho
after they were so placed, and returned to the Southern railway.

The freight charges on the fourteen cars were paid but South
railway claimed $146.00 demurrage on thirteen of the fourteen c
which charge Greensboro Ice & Coal Company refused to pay, all
ing that they were improper and illegal.

We are of the opinion that no demurrage should be demanded
Southern railway did not place the cars at the place designated
the shipper. We recognize the right of the Southern Railway Co
pany to refuse to deliver freight until all proper charges for freig
and demurrage are paid, but it has no right to demand the paym
of improper demurrage charges on thirteen cars already delivered
a condition precedent to the delivery of four cars of coal involved

the order in this case, or to refuse to deliver the four cars on the side track jointly built and owned by the Greensboro Ice & Coal Company and themselves, when they were requested so to do.

It is, therefore, ordered that the exceptions be and they are hereby overruled.

First exception is overruled—the reason alleged for this exception having no existence in fact. Greensboro Ice & Coal Company did not owe the demurrage claimed on five cars of coal and eight cars of wood. Greensboro Ice & Coal Company did not promise to
44 pay demurrage claim or any part of it. Southern railway was not induced to place cars of coal and wood on the siding above mentioned by reason of a promise by Greensboro Ice & Coal Company to pay the alleged demurrage charges. The freight on the four cars embraced in the order and all cars up to that time delivered to Greensboro Ice & Coal Company had been paid, and Southern railway was not required to extend any credit or part with their lien upon the four car-loads of coal. It appeared that the freight had been paid and that there was no valid charge for demurrage.

Second exception is overruled. Greensboro Ice & Coal Company had the right to have the four cars of coal placed on the side track built by themselves and the Southern railway, and they demanded that they be so placed.

Third exception is overruled.

"A." The lien which Southern railway had for freight had been discharged by payment thereof by Greensboro Ice & Coal Company, and there was no demurrage or other valid charge against said company.

"B." The freight and all legal charges had been paid and therefore Southern railway was not required to extend credit to Greensboro Ice & Coal Company by the said order.

"C." The complaint of Greensboro Ice & Coal Company was filed with the commission and notice thereof was given to the Southern railway, and the Southern railway appeared in response to said notice and answered orally and made defence for Southern railway, and, after hearing and considering all of the evidence and argument offered, the order was made by this commission.

Fourth exception is overruled. The order of this commission is not contrary or repugnant to Constitution of the United States or act of Congress establishing the Interstate Commerce Commission.

The cars of freight had arrived at destination and the freight and all proper charges had been paid thereon, and this commission had the power and it was their duty to order delivery of said cars to the consignee.

This December 10, 1903.

[Seal North Carolina Corporation Commission.]

FRANKLIN McNEILL, *Chairman.*

45 Before the North Carolina Corporation Commission.

DECEMBER 14TH, 1903.

In the Matter of THE GREENSBORO ICE AND COAL COMPANY
v.
SOUTHERN RAILWAY COMPANY.

To the North Carolina corporation commission and the Greensboro Ice & Coal Company:

The defendant Southern Railway Company hereby gives notice that it appeals from the order of the corporation commission entered on October 1, 1903, requiring the Southern Railway Company to place four cars of coal shipped from points outside of North Carolina to Greensboro North Carolina, upon a certain private track in Greensboro, and from the order overruling the exceptions filed by the Southern Railway Company to the order above mentioned, entered on December 9, 1903, and from every part thereof, and for its grounds of appeal and assignment of error, saith:

(1.) That the corporation commission erred in entering the order of October 31, 1903, upon the record then before the court, (for that the order was not warranted by the allegations of fact as they in some way appeared to the commission, and) for that the order was made *ex parte* and without giving the defendant an opportunity to be heard or answer, and that the entry of said order was not in accordance with due process of law.

(2.) For that the corporation commission erred in entering its order of December 9, 1903, as follows:

(*a.*) In its finding of facts from the testimony before it as not in accordance with the evidence, and in finding that he Southern Railway Company was not entitled to charge demurrage for the refusal of the complainant to accept and unload the cars consigned to it.

46 (*b.*) For overruling exception 1, for the reasons stated in the exception.

(*c.*) For overruling exception 2, for the reasons stated in the exception.

(*d.*) For overruling exception 3, and subdivision- A, B and C thereof, and each of them.

(*e.*) For overruling exception 4, for the reasons stated in the exception.

(3.) For that the hearing and determination of the controversies and both the orders were not due process of law.

(4.) For that the order requiring the delivery of four cars containing interstate freight before bulk had been broken, and while each car was an original package, and before any delivery had been made to and accepted by the consignee and while the same was in the custody and possession, and under the control of the interstate carrier,

defendant, was an attempted regulation of and interference
interstate commerce, and an unconstitutional assumption of
er by the said corporation commission, and void.
Therefore defendant, the appellant, appealing from the orders,
that the case be transferred to the superior court of such county
hall be designated by the commission for trial under the laws of
th Carolina.
December 18th, 1903.

SOUTHERN RAILWAY COMPANY,
By W. A. HENDERSON,
F. H. BUSBEE,
C. B. NORTHROP, AND
R. C. STRONG, *Attorneys.*

Ordered that the record in this case be transmitted to the superior
rt of Guilford county.

FRANKLIN McNEILL, *Chairman.*

Cars Placed on Siding.

Greensboro Ice & Coal Company.

Car number.		Arrived.	Place.	Released.	Demurrage.
& W. 46826		9/14	10/1/8 p. m.	10/2/1 a. m.	12
& W. 10514		9/19	"	" 4 a. m.	7
" 12172		9/19	"	" 7 a. m.	10
" 11440		9/24	"	" 7 a. m.	3
" 6104		9/29	10/2/8 a. m.	" 11.20 a. m.	
" 6047		"	"	" "	
" 7565		"	"	" "	
" 11032		10/2	10/2/12 m.	" 4 p. m.	
" 1816		9/9	"	" 6 p. m.	17
C. L. 2074	wood	9/10	10/3/11 p. m.	10/4/10 a. m.	17
		Delay of two days no shifting done.			
W 8707	"	9/10	10/6 1.30 a. m.	10/6/11 a. m.	17
U 42543	"	9/19	"	"	11
L 18782	"	9/25	10/7/11 a. m.	10/7/4 p. m.	7
L 21625	"	9/14	"	"	17
					$118 Bill presented.
U 71426		10/6	10/8/8 a. m.	10/8/10 a. m.	
L 9812		9/25	"	" 2 p. m.	
L 16295		10/6	"	" "	
& W 6234		10/7	10/10/9.40 a. m.	10/10/6 p. m.	
& W 22224		10/2	"	" "	
& O 19931			10/11/10 a. m.	10/11/2 p. m.	
L 14478		9/23	"	" 4 p. m.	
U 66804		10/13	10/14/7 a. m.	10/14/10 a. m.	
U 62146		10/13	10/14/11 a. m.	10/15/8 a. m.	
& W 23773		10/14	10/26/9 a. m.	10/26/4 p. m.	

Cars Held on the Yard Delivery Refused.

N & W	12565	arrived 10/19	freight paid 10/27
S O U	70734	10/19	"
C & O	17895	10/19	"
S O U	9281	10/20	"
N & W	23283	10/21	"
C & O	18747	10/23	"
S O U	43194	10/25	"
N & W	5885	10/26	10/29
S O U	12983	10/26	11/3
N & W	11502	10/28	"
N & W	10725	10/28	"
N & W	6783	10/30	"
A C L	20085	11/2	"
S O U	43106	11/2	10/10

48

A C L	22517	11/9	10/10
A C L	20033	11/2	10/10

Ex. # 1.

49 Southern Railway Company.

Office of Superintendent.

GREENSBORO, N. C., *Aug. 20th.*—03ch.

File C.—266.

Greensboro Ice & Coal Company, Greensboro, N. C.

DEAR SIR: Referring to conversation this morning. There is no objection from a railroad standpoint to your changing the line and erecting a trestle as indicated on the attached sketch, providing, of course, that the change of line and trestle meets with the requirements of the Southern Railroad, and that all of the work is done by your own men and at your own expense.

When the work is completed, it will be passed upon by Mr. Wells.

Yours truly,

ED. COOPMAN,
Superintendent.

Ex. # 2.

50 Southern Railway Company.

Office of ——.

GREENSBORO, N. C., *Oct.* 12, 1903.

Greensboro Ice & Coal Company, Mr. M. W. Thompson, manager.

DEAR SIR: Please take notice that commencing 12:00 noon, Oct 17th, 1903 this company will decline to switch any cars to your private siding, in the yard of your company at Greensboro, N. C., and will only make delivery to you on the public team tracks of this company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations declining to pay reasonable charges for the use of cars that have been detained before unloading on your private track above referred to and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control.

Agent, W. E. COFFIN,
Southern Railway Company.

Ex. # 3.

51 GREENSBORO, N. C., *Oct.* 31, 1903.

Greensboro Ice & Coal Co., Greensboro, N. C.

GENTLEMEN: Referring to your letter of Oct. 27th asking that we place certain cars on your private sidings. We are not prepared to comply with your request so far as placing in your private yard is concerned, but we can offer you these cars upon our team tracks, and we will place them promptly upon your order to that effect, independent of the old account for car service, upon payment of the car service, which has accumulated on each of these cars since tendered to you upon team tracks, and which you decline to accept. I attach statement of car service up to the night of Oct. 31st, that is now due upon cars in our yard for you.

Yours truly, W. E. COFFIN, *Agent.*
S.

Ex. # 4.

52 Southern Railway Company.

Office of ——

GREENSBORO, N. C., *Nov.* 11, 1903.

Greensboro Ice & Coal Company, Greensboro, N. C.

GENTLEMEN: Your letter tenth will refer you to my letter October 12th, in which you were advised that by reason of refusal to comply with car service regulations, switching your private track would be

discontinued. Cars mentioned in your letter have been tendered to you on team tracks and we have been ready at all times to deliver same to you on team tracks or upon payment of charges due on the former cars, and these you now mention, and guarantee in a manner satisfactory to us the payment of future charges on private track, to place cars on such private track. We deny that you have any claim against this company for detention, that these cars in our possession are delayed solely by reason of your arbitrary action, and that instead we have a lien upon these cars, car service at rate one dollar per day, properly chargeable to you for neglect in unloading.

Yours truly, W. E. COFFIN, *Agent.*
S.

Ex. # 5.

53 Southern Railway Company.

Office of ——

GREENSBORO, N. C., *Nov. 7th,* 1903.

Mr. M. W. Thompson, secretary Greensboro Ice & Coal Company, Greensboro, N. C.

DEAR SIR: Referring to your inquiry as to whether or not I think the chute that you have erected is a benefit to the Greensboro yard.

I will state that it most decidedly is, as it has enabled you to release cars in half the time as heretofore, and is therefore of mutual benefit.

Respectfully, R. A. WHITAKER,
Yard Master.

54 *Answer of the Greensboro Ice & Coal Company. Filed Feb. 9th,* 1904.

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

In the Circuit Court of the United States for the Eastern District of North Carolina at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
GREENSBORO ICE AND COAL COMPANY, and FRANKLIN MCNEILL, Samuel L. Rogers, and Eugene C. Beddingfield, Defendants.

Answer to Bill of Complaint.

The defendant The Greensboro Ice and Coal Company, without waiving any rights it has to plead to the jurisdiction, but insisting

that the circuit court of the United States has no jurisdiction to try and determine the matters and questions raised in this suit by the bill of complaint, and that a bill in equity will not lie in any court to enjoin and restrain the defendant. The Greensboro Ice and Coal Company, from bringing such actions in the State courts, on causes of actions heretofore accruing, or which may hereafter accrue as it may desire, answers the complaint of the plaintiff as follows:—

1st. That the Greensboro Ice and Coal Company is a corporation organized and existing under the laws of the State of North Carolina, and doing an ice, coal and wood business in the western district of North Carolina and is in no way connected in a purpose to sue the Southern Railway Company with the North Carolina corporation commission, or any of the other defendants, nor is it connected with it in any other manner or for any other purpose, except that the said corporation commission made an order on October 31st, 1903, which has been violated by the Southern Railway Company by
55 reason of which the defendants Greensboro Ice and Coal Company has a cause of action which has already accrued against the Southern Railway Company, as will hereinafter more fully appear, but the corporation commission has in no way any interest therein, and neither have either of the other defendants in this suit.

2nd. That it is admitted that the complainant, The Southern Railway Company, is engaged as a common carrier of freight and passengers in inter-state and intra-state business in the State of North Carolina, and it carries on its business over lines originally owned by domestic corporations within the State, and leased to the complainant or otherwise control-ed by it, as this defendant is informed and believes.

3rd. That in answer to the allegations made in the third article of bill of complaint, this defendant says that most of the matters and things therein alleged are not true, and they are all denied with the qualification appearing hereinafter, and the facts in respect to the matters therein referred to are as follows:—That some time in the month of October, 1903, there was shipped over the lines of the Southern Railway Company, which is owned or operated, three car loads of coal from points without the State of North Carolina, and one car load of wood from a point within the State of North Carolina, and consigned to the defendant. The Greensboro Ice and Coal Company, at Greensboro, N. C. and the defendant is not advised as to whether the said three car loads of coal passed over the lines of other companies without the State of North Carolina before reaching the lines of the Southern Railway Company or not, but as the defendant is advised and believes, the said three car loads of coal did pass over the line controlled by the Southern Railway Company or the lines of some other company without the State of North Carolina, and over the lines control-ed and operated by complainant within the State, but the said car load of wood did not pass outside the limits of the State of North Carolina from the time it was shipped and from its

place of shipment until it reached its destination at Greensboro, N. C. That it is not true, as the complainant alleges, that the cars shipped were placed upon the public team tracks in the city of Greensboro in order that they might be unloaded by the defendant, Greensboro Ice and Coal Company, and that this defendant was then notified by the complainant that the said three car loads of coal and car load
56 of wood or that four car loads of coal would be so placed for unloading "upon the payment of freight charges then lawfully due upon the same and certain charges for the use of said cars in storing said coal caused by delay in unloading said cars," and the defendant says that all proper freight charges on the cars shipped to it were properly and promptly paid, and also that all storage charges against it due the plaintiff were properly paid. The defendant states that the complainant did not contend or allege that there were any freight or storage charges due on account of the cars referred to in the bill of complaint or in this answer, but that it did demand the payment of unlawful and improper charges which the complainant alleged and contended were due on account of charges against the defendant in respect to other freight which had been shipped and delivered to the Greensboro Ice and Coal Company prior to the time the cars referred to in the bill of complaint as being four car-loads of coal and as referred to in the answer as being three car-loads of coal and one car load of wood, were received and arrived at the station of the complainant at Greensboro, N. C. The defendant alleges that the charges so made by the complainant against the Greensboro Ice and Coal Company were improper and unlawful, as will hereinafter appear.

4th. In answer to the fourth article of the bill of complaint this defendant says that statements contained therein, except in so far as they agree with the statement contained in this answer, are untrue and are denied. The truth in respect to the matters referred to in the said article of said complaint is as follows:—The Greensboro Ice and Coal Company had for a long number of years been using a spur track or siding leading from the main line of the Southern Railway Company in the city of Greensboro to the private yard of this defendant, the said track being about 100 yards in length, which side track was used by the Southern Railway Company for its convenience, as well as for the convenience of this defendant, for the purpose of placing cars therein in order that freight consigned to the defendant, Greensboro Ice and Coal Company, might be unloaded from such cars, and the said siding or spur track had been used by the Southern Railway Company in unloading from its cars, freight consigned to other shippers for the convenience of such shippers and the complainant, Southern Railway Company. That prior to October 8th, 1903, it was agreed between the complainant and this defendant that the part of such spur track farthest removed from the line of the
57 Southern Railway Company might be torn up and a trestle constructed, and the said track or that portion of it which was removed should be placed on said trestle for the purpose of unloading

coal *which* greater facility and dispatch and thereby subserving the convenience and interest of the complainant and this defendant, and in pursuance of such agreement, such work was begun on September 8th, 1903, and completed on or about the first day of October, 1903, and was received and approved by the complainant at the time it was completed, and the complainant has thereafter used said track, and placed its cars thereon for the purpose of unloading from them coal and wood, and had been so doing from the time of its completion and prior to October 31st, 1903. That no suggestion has ever been made by the complainant that the said track as completed was unsafe or that this defendant would arbitrarily and unnecessarily fail to unload any cars placed on said siding containing freight consigned to this defendant or that complainant would not promptly receive its cars again after they were unloaded. That the defendant Greensboro Ice and Coal Company, does a large business over the lines of the Southern Railway Company, and there are shipped to it over its lines about 365 cars each year, which are to be unloaded in the city of Greensboro, and the business of the complainant at Greensboro is such that it has been necessary to construct and it has been its custom to construct and to use sidings leading to manufacturing establishments and others receiving approximately the amount of freight which is received by this defendant, and there are in and near the town of Greensboro, perhaps 25 such sidings, and there is none which is more conveniently located or easier of access than the one which is constructed to the place of business of this defendant. That the manner of handling traffic and freight by the complainant at Greensboro for some years passed has been very unsatisfactory and its freight yard and sidings have been greatly congested to such an extent that as this defendant is informed and believes, some persons have been prevented from doing business and enterprises from being developed because of the great delay in receiving freights consigned to them at said point, and all this notwithstanding the complainant has been greatly aided and the delivery of freight by it greatly facili-
58 tated by the existence of sidings or spur tracks and coal schutes, such as the defendant, Greensboro Ice and Coal Company, has been using. That it is not practicable and scarcely possible for this defendant to carry on its business and unload its freight from the public team track in the town of Greensboro, owing to the quantity and the character of the freight consigned to it, and it would not be possible for the complainant to permit such freight to be unloaded from its public team tracks without greatly inconveniencing other shippers and without interfering with and delaying the transportation and delivery of freight, which it is the complainant's duty as a common carrier to handle and deliver. The defendant denies that the public team tracks are adequate and sufficient for the delivery of freight consigned to this defendant, and denies that the defendant has any public coal schute located at Greensboro at which the Greensboro Ice and Coal Company could have unloaded any of its freight. This defendant further says that the complain-

ant did not refuse to deliver cars on the siding leading to this defendant's place of business, for any of the reasons assigned in the bill of complaint, but in truth and in fact it refused to so deliver freight and greatly inconvenience itself by its declination, because the defendant, Greensboro Ice and Coal Company, had seen proper to deny its liability for certain charges made by the complainant, on account of the alleged liability of the defendant to pay storage on freight which had been delivered before the said four cars mentioned in the bill of complaint, and in the answer, were shipped to Greensboro. The complainant undertook to punish the said defendant for questioning a charge which the complainant had made against it, and for refusing to pay the same until it had been determined by a proper and lawful tribunal that the same was due.

5th. That in answer to the fifth article of the bill of complaint, this defendant says that it is wholly untrue that the cars referred to therein, or any cars consigned to the Greensboro Ice and Coal Company remained upon the public team track of the complainant at Greensboro for any time because this defendant declined to pay the freight charges on said cars, or on any cars, or that it refused to pay any demurrage charges on these cars prior to the date of said order, or that any such charges were demanded, or that this defendant refused to pay any proper demurrage charges, or charges
59 for storage, on any account.

6th. That the allegations contained in article six of the complaint are not true, and are denied, except in so far as the same are inconsistent with what is said by this defendant in this article of its answer. That the Greensboro Ice and Coal Company applied to the North Carolina corporation commission for an order requiring the complainant, The Southern Railway Company, to place on its siding above mentioned three car loads of coal and one car load of wood, hereinbefore referred to, which the Southern Railway Company was wrongfully and arbitrarily refusing to so place, for the reason as assigned by it in writing, that the Greensboro Ice and Coal Company declined to pay demurrage charges amounting to $145.00 on account of other freight which had already been delivered, and which charges this defendant alleged were improper and unlawful, but which it was ready to pay when the courts should decide that it was liable therefor, and the said corporation commission, after due notice to the Southern Railway Company, and after hearing its reasons for refusing to place the said cars, did on the 31st day of October, 1903, under the power conferred on said North Carolina corporation commission by the act creating it, the act of 1899 as amended, require said cars to be placed forthwith and left open for future determination the question of the liability of the Greensboro Ice and Coal Company to pay said demurrage charges on account of freight already delivered.

7th. That it is true that exceptions were filed by the complainant to the order of the corporation commission of October 31st, 1903, and thereafter a full hearing was had before said corporation com-

mission at Greensboro, N. C. and the exceptions of the complainant were overruled, and a decision of the said commission was rendered, as will fully appear by reference to the said decision, a copy of which is hereto attached marked *Exhibit A*, and the same is referred to for a history of the various transactions leading up to the said decision.

8th. That the allegations contained in the 8th article of the bill of complaint in this suit are untrue and are denied, except in so far as they correspond with this article of the answer. That the only action at law which this defendant has or could have, as he is
60 advised, by reason of the complainants violating the order of the corporation commission, and by reason of the complainant, Southern Railway Company, refusing and failing to deliver the said four cars to it, is an action for damages, and also as it is advised and believes the complainant is liable to it for a penalty and demurrage on account of the failure to deliver each of said four cars, and this defendant has not threatened nor does it propose to bring any action or actions against the complainant on account of its conduct in failing to deliver said cars, except such as are indicated above in this article. And it is further shown by this defendant that without regard to the said order of the corporation commission, this defendant would have the right to bring some, if not all of said actions. It is not true, as suggested in said article of complaint, that there is any collusion between the defendant corporation commission or either of the other defendant- and this defendant, and it is not true that any demand has been made on the complainant that it submit to any unlawful or unconstitutional order or requirement. The only ground for the allegation that this defendant has threatened to institute suits or actions against the complainant unless it abandoned its appeal from the order of the corporation commission, is a letter addressed by counsel of defendant to one of the counsel who represented the complainant in the hearing before the North Carolina corporation commission at Greensboro, N. C. on exceptions to the order of said commission, dated October 31st, 1903, and in said letter there was the suggestion that this defendant, while it had a right to prosecute the action above mentioned, did not desire to do so and be placed in the position of suing for penalties, and would not do so, unless the complainant proposed to continue to ignore the rights of this defendant and to insist on a position which appeared to this defendant to be unjust, arbitrary and unreasonable. However, as this defendant is advised it had the right in law to prosecute said actions, and its statement that it would do so under any given conditions or circumstances was an assertion of a right and in no way was it an injustice to the complainant.

61 9th. That the 9th article of the bill of complaint is admitted.

10th. That this defendant is in no way interested in any action which the other defendants may bring or have threatened to bring against said complainant, and it is not in any way connected with

the said defendants in any right of action they may have or in an
action they may propose to bring, and is not advised as to what the
intentions in this respect are.

11th. That this defendant has no interest in any cause of a
tion arising under the section of the act creating the North Caroli
corporation commission copied in the eleventh article of the bill
complaint, and the charge is untrue and without any foundation i
fact that this defendant proposes or threatens to join the other defen
ants in any action or actions against the complainant or under th
said section of said act, and it is not true that this defendant is abo
to bring or threatens or claims the right to bring any action again
the complainant except those referred to above, and these are for ac
committed and things done prior to the filing of the bill in this sui
and this defendant is advises and believes that any action which th
other defendants may propose to bring against the complainant do
not in any way entitle complainant to an injunction against this d
fendant.

12th. That in answer to article twelve in the bill which is err
neously numbered thirteen, the defendant says that if it be true tha
the complaint has the same defense to an action which may b
brought by this defendant for failure to deliver said cars that
would have to an action which may be brought by the other defen
ants, under and by virtue of section 23 of the Act of 1899, chapte
164. that that in no way effects this defendant's right to maintain a
action at law against the complainant nor does it in any way mak
the right of action which this defendant has depend on its co-d
fendants, nor does it in any way make the claim and demand
62 of the defendant against the complainant joint, or authoriz
the complainant in joining the defendants in this suit, an
this defendant is further advised that any defense which the com
plainant has or may have to a demand of the defendants or any
them for the payment of any amount by reason of the complai
ant's failure to comply with the order of the North Carolina co
poration commission, or to place said cars as requested by this defend
ant will be available to it in an action at law when suit is brough
for the recovery of such amount or amounts, and that the complain
ant fails to show any reason for contending that irreparable injur
will be done it. This defendant says further that the order of th
corporation commission referred to in the bill of complaint is in n
way violative of the constitution and laws of the State of North Caro
lina or of the United States, and that it in no way interferes or tend
to interfere with inter-state commerce, but that some such order wa
the only means left open to the defendant, The Greensboro Ice and
Coal Company, by which it could require the delivery of inter-stat
and intra-state freight consigned to it, and that such order and th
compliance with it in no way interfered with the complainant's carry
ing on its inter-state commerce business. That it is not true that th
North Carolina corporation commission ordered or that this defend
ant requested that cars loaded with inter-state traffic or other freigh

should be placed on this defendant's siding, when there was a lien for freight or demurrage on such freight, but this defendant avers that as to said four cars, as above alleged, all freights claimed by the complainant had been paid and no demurrage charges on said cars were claimed and the complainant's refusal to so place said cars was for the reasons hereinbefore stated:

Wherefore, this defendant having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to its best knowledge and belief, humbly prays this honorable court to enter its decree that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained, and for such fur-
63 ther and other relief in the premises as to this honorable court may seem meet and in accordance with equity.

——— ———,
——— ———,
Solicitors for the Defendant,
Greensboro Ice and Coal Company.

W. W. Thompson, being first duly sworn, says he is secretary and treasurer of the above named defendant, The Greensboro Ice and Coal Company, and in its behalf verifies this answer: that he has read the foregoing answer, and that the matters and things therein stated are true of his own knowledge, except as to the matters stated on information and belief and as to these he believes them to be true.

M. W. THOMPSON.

Sworn to and subscribed before the undersigned, this the 8th day of February, 1904.

R. G. VAUGHN,
Notary Public.

64 "EXHIBIT A."

North Carolina Corporation Commission.

RALEIGH, N. C., *December* 10, 1903.

STATE OF NORTH CAROLINA on the Relation of the NORTH CAROLINA CORPORATION COMMISSION.

GREENSBORO ICE and COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

This cause coming on to be heard on exceptions by the Southern Railway Company, and evidence offered therein by both parties, the following facts are found:

The Greensboro Ice and Coal Company, jointly with the South
Railway Company, constructed a side track from the Southern
way into the coal and wood yard of the Greensboro Ice and
Company at Greensboro, and on the end and a part of this side tr
within the yard of the Greensboro Ice and Coal Company is a tre
with bins underneath to facilitate the delivery of car loads of c
This side track is about 300 feet long.

Between the 17th and 20th of October four cars of coal were tra
ported to Greensboro, consigned to the Greensboro Ice and
Company. The Greensboro Ice and Coal Company had a stand
order with the Southern railway to place all of their cars of frei
on this side track, and offered to pay the freight on these four
if assurance was given that the cars would be so placed.

The Southern railway refused to place said cars on this side tra
as requested by the Greensboro Ice and Coal Company, but offe
to place them on public team track and did place them on pu
team track.

The four cars of coal were brought from points beyond the St

The Southern Railway Company, on the 12th of October 19
issued notice to Greensboro Ice and Coal Company as
65 lows: "Please take notice that commencing 12:00 noon,
tober 17th, 1903, this company will decline to switch
cars to your private siding, in the yards of your company at Gree
boro, N. C. This action is made necessary by reason of your
fusal to comply with car service regulations declining to pay reas
able charges for the use of cars that have been detained before
loading on your private track above referred to and that we find
necessary for the protection of our equipment to tender you furth
deliveries upon tracks where cars may be under our immedi
supervision and control."

There was at that time, to-wit: the 12th of October, 1903, and
still pending, a controversy between Greensboro Ice and Coal Co
pany and Southern railway about certain demurrage charges. T
Southern railway claimed that Greensboro Ice and Coal Compa
owed them $146.00 demurrage on thirteen cars of coal and wo
Greensboro Ice and Coal Company denied that they owed this or a
other sum to Southern railway on account of demurrage. T
facts in regard to this charge are as follows: For some years the
had been a side track constructed jointly by the Greensboro Ice a
Coal Company and Southern Railway Company into former's c
and wood yard at Greensboro. The Greensboro Ice and Coal Co
pany handles over 200 car-loads of coal per annum; and to exped
the delivery and furnish proper facilities for delivery of coal, Sou
ern Railway Company agreed that the rails be removed from t
end of the portion of this side track within the coal and wood yar
and that coal bins might be constructed under the track and t
track elevated and pleced upon a trestle. This work was beg
September 8th, 1903, and finished October 1st, 1903. Greensbo
Ice and Coal Company furnished most of the material other th

the rails and did all of the work except laying and placing the rails.

While the above repair was in progress, fourteen cars of freight, consisting of wood and coal, consigned to Greensboro Ice and Coal Company, were transported to Greensboro by the Southern Railway. Only one of these cars were ever placed at an accessible point for unloading, and this was unloaded promptly. Greensboro Ice and Coal Company designated a side track nearest to their coal and
66 wood yard, being part of the side track leading into said yard but outside of their enclosure, as the place at which they desired the cars placed for unloading. Southern Railway did not place these thirteen cars as requested nor at any other accessible point during that period. The cars could have been placed on the track designated. Cars for other persons were placed on this track during this period.

The repair on the side track above mentioned was finished October 1st, and nine of the thirteen cars above mentioned were placed on it by the Southern Railway and emptied and returned by the Greensboro Ice and Coal Company within twenty four hours thereafter. The remaining four cars were not placed on this side track for about five days, but each one of them was unloaded within three or four hours after they were so placed, and returned to the Southern Railway.

The freight charges on the fourteen cars were paid, but Southern Railway claimed $146.00 demurrage on thirteen of the fourteen cars, which charge Greensboro Ice and Coal Company refused to pay, alleging that they were improper and illegal.

We are of the opinion that no demurrage should be demanded, as Southern Railway did not place the cars at the place designated by the shipper. We recognize the right of the Southern Railway Company to refuse to deliver freight until all proper charges for freight and demurrage are paid, but it has no right to demand the payment of improper demurrage charges on thirteen cars already delivered as a condition precedent to the delivery of four cars of coal involved in the order in this case, or to refuse to deliver the four cars on the side track jointly built and owned by the Greensboro Ice and Coal Company and themselves, when they were requested to do so.

It is, therefore, ordered that the exceptions be and they are hereby overruled.

First exception is overruled—the reasons alleged for this exception having no existence, in fact. Greensboro Ice and Coal Company did not owe the demurrage claimed on five cars of coal and eight cars of wood. Greensboro Ice and Coal Company did not promise to pay demurrage claim or any part of it. Southern Railway was not induced to place cars of coal and wood on the siding
67 above mentioned by reason of a promise by Greensboro Ice and Coal Company to pay the alleged demurrage charges. The freight on the four cars embraced in the order and all cars up to that time delivered to Greensboro Ice and Coal Company had been paid, and Southern Railway was not required to extend any credit

or part with their legal lien upon the four car loads of coal. It appeared that the freight had been paid and that there was no valid

Second exception is overruled. Greensboro Ice and Coal Company had the right to have the four cars of coal placed on the side track built by themselves and the Southern Railway, and they demanded that they be so placed.

Third exception is overruled.

"A." The lien which Southern railway had for freight had been discharged by payment thereof by Greensboro Ice & Coal Company, and there was no demurrage or other valid charge against said company.

"B." The freight and all legal charges had been paid and therefore Southern railway was not required to extend credit to Greensboro Ice and Coal Company by the said order.

"C." The complaint of Greensboro Ice and Coal Company was filed with this commission and notice thereof was given to the Southern railway and the Southern railway appeared in response to said notice and answered orally and made defense for Southern railway; and, after hearing and considering all of the evidence and argument offered, the order was made by this commission

Fourth exception is overruled. The order of this commission is not contrary or repugnant to the Constitution of the United States or act of Congress establishing the inter-state Commerce Commission.

The cars of freight had arrived at destination and the freight and all proper charges had been paid thereon, and this commission had the power and it was their duty to order delivery of said cars to the consignee.

This Dec. 10, 1903.

FRANKLIN McNEILL.
Chairman.

[Seal North Carolina Corporation Commission.]

68 *Affidavit of A. B. Andrews 1st Vice President Southern Ry. Co.*

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL CO., ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Wake:*

Personally appeared before me A. B. Andrews, who on oath, says he is first vice president of Southern Railway Company; that on

ber 31st., 1903, he was served with an order from the North Caro- corporation commission requiring Southern Railway Company ace four cars of coal on private siding of Greensboro Ice & Coal pany at Greensboro, North Carolina, copy of said order is hereto hed marked "Exhibit A"

A. B. ANDREWS.

vorn to before me this 8th day of February 1904.

PEARCE HORNE, JR.

Affidavit of H. W. Miller, Asst. to 1st Vice President.

Filed Feb. 9th, 1904.

TED STATES OF AMERICA:

he Circuit Court of the United States, for the Eastern District f North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL CO. *et al.*, Defendants.

E OF NORTH CAROLINA, *County of Wake.*

ersonally appeared before me H. W. Miller, who, on oath says he is an officer of Southern Railway Co., to-wit: assistant to vice president, and that on the 26th day of Oct., the letters, es of which are hereto attached, were sent through the mail to . Andrews, first vice president of said company; that deponent is ed at Raleigh, N. C., and of his own knowledge knows that the original letters were served on said A. B. Andrews, first vice dent of Southern Railway Company, as aforesaid.

H. W. MILLER.

vorn to before me this 8th day of Feb., 1904.

J. W. SMITH,
Notary Public.

North Carolina Corporation Commission.

RALEIGH, N. C., *October* 26, 1903.

A. B. Andrews, first vice-president Southern Railway Company, aleigh, N. C.

EAR SIR: I am directed by the commissioners to enclose you copy tter written to the Greensboro Ice & Coal Company, and to say to that they are of the opinion that you should not refuse to switch

the cars of this company after the freight has been paid, to the private siding as desired, and they trust that you will give instructions to have the cars placed without delay.

Very respectfully,

(Signed) H. C. BROWN, *Clerk.*

71 North Carolina Corporation Commission.

RALEIGH, N. C., *Oct. 26th,* 1903.

Mr. M. W. Thompson, manager, Greensboro, N. C.

DEAR SIR: The commissioners have had the matter of your complaint against the Southern railway, in regard to demurrage charges and the failure to place cars on your private siding for unloading before them today.

I am directed to say that they endeavored to get Mr. Albright, manager of the North Carolina Car Service Association before them this morning for a conference in regard to the accumulative demurrage charges, but he is not in the city and I understand that he is now in Greensboro to see you touching the matter.

As to whether or not you are liable for the demurrage charges claimed against you, the commission cannot pass upon this until it has all the facts before it, but as to the placing of cars on your siding, the commission is of the opinion, with the facts presented, that if you have paid the freight the company should place the cars on the siding as desired, and the Southern Railway has been so notified.

As soon as Mr. Albright returns the matter of the accumulative demurrage charges claimed will be taken up with him.

Very respectfully,

(Signed) H. C. BROWN, *Clerk.*

Copy—P

72 *Affidavit of W. S. Schenck, Clerk Freight Office.*

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the Eastern District of North Carolina. At Raleigh: Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,

v.

GREENSBORO ICE & COAL CO., ET AL, Defendants,

STATE OF NORTH CAROLINA, *County of Guilford.*

Personally appeared before me W. E. Schenck, clerk in freight office of Southern Railway Company, at Greensboro, North Carolina, and having been duly sworn, on oath, says:

iat Southern Railway Car No. 70,734 was received at Greens-
North Carolina, at 11 a. m., Oct. 18th, 1903 and was placed
ublic team track at Greensboro, N. C. on Oct. 23, 1903, remain-
there until Nov. 2nd, 1903, when it was moved to Hucomuga
siding and remained on said siding until Nov. 14th, 1903.
eponent further says that he saw said car standing on said public
track between the dates above mentioned.
eponent further says that Chesapeake and Ohio car No. 17,895
received at Greensboro on Oct. 19th., 1903 at 8 p. m., and was
d on public team track of Southern Railway Company at
nsboro, N. C. on Oct. 22nd., 1903, remaining there until Nov.
, 1903, when it was moved to Hucomuga Mills siding, remain-
there until Nov. 14th., 1903.
eponent further says that he saw said car standing on said pub-
eam tracks between the dates above mentioned.
eponent further says that Norfolk and Western car No. 12,565
received at Greensboro, N. C. at 8 p, m., Oct. 18th., 1903, said
stood on coach shed track Oct. 19th and 20th., and was placed
on public team track Oct. 22nd., and remained there until
Nov. 2nd., when it was moved to Hucomuga Mills siding,
remaining there until November 14th, 1903.
eponent further says that he saw said car standing on said pub-
eam track during the dates above mentioned.
eponent further says that Norfolk and Western car No. 23,283
received at Greensboro, N. C. at 4 a. m., Oct 22nd, 1903, and
ed on public team track at Greensboro, N. C. on same date re-
ning there until Nov. 2nd. It was then moved to Hucomuga
s siding and remained there until Nov. 14th, 1903.
eponent further says that he saw said car standing on said public
n track during the dates above mentioned.
eponents further makes oath that all the above mentioned four
were not delivered to Greensboro Ice & Coal Company, or un-
ed by them during said periods, and when they were moved to
omuga Mills siding, as aforesaid, they were in the same condition
hen they arrived at Greensboro N. C. and that none of the coal
been taken, or the loads or packages broken in any way.
eponent further says that the reason why the cars were moved
Hucomuga Mills siding was and is that they were blocking the
n tracks by remaining so long standing thereon because of the
sal of Greensboro Ice & Coal Company to unload same, and were
rfering with the public use of said team tracks and the busi-
at Greensboro.
eponent further says that said public team tracks are accessible
loading and unloading and have been and are now in common
by the public at Greensboro, North Carolina, and all the mer-
nts of said city for the unloading and receipt of all merchandise
commodities shipped to Greensboro, North Carolina.
eponent further says that coal for the gas company at Greensboro
for other parties has habitually been unloading from said team

tracks, and the same are now used for that purpose by several members of the public at Greensboro.

74 Deponents further says that Southern Railway Company has a coal chute which has been specially provided by it and can be used by any member of the public shipping coal to Greensboro, if so desired, and that same was available to Greensboro Ice & Coal Company at any and all times after the arrival of said above mentioned four cars of coal.

W. E. SCHENCH.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

75 *Affidavit of R. P. Albright, Mngr. Car Service.*

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh. Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
vs.
GREENSBORO ICE & COAL CO. ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Wake:*

Personally appeared before me, P. R. Albright of the city of Raleigh, county of Wake, North Carolina, who is manager of the North Carolina Car Service Association, and first being duly sworn deposes and says:

That he is the manager of the North Carolina Car Service Association.

That for three days prior to the morning of October 29th, 1903 he was absent from the city of Raleigh, and during this period had no knowledge of any action on the part of the North Carolina corporation commission relative to any complaint of the Greensboro Ice & Coal Co., that upon returning to his office on October 29th, 1903 he was informed that during his absence inquiry had been made for him by the clerk of the North Carolina corporation commission. Finding no written communication from the North Carolina corporation commission, he immediately called at the office of the corporation commission, which is situated in Raleigh, and discussed with the chairman of said commission Mr. Franklin McNeill, informally, the two other commissioners composing the said commission being present, the question of delivery of certain cars consigned to the Greensboro

Ice & Coal Company of Greensboro, upon which freight and demurrage charges had accrued and which were being held for the payment of said charges. That he was informed by e said chairman that request had been made upon the first vice esident of the Southern railway for the delivery of said cars upon e private track of the Greensboro Ice & Coal Company by letter ted October 26th 1903.

That he did not see nor did he have called to his attention any itten or formal complaint of the said Greensbore Ice & Coal com- ny but only some letters and papers of a correspondence between id Greensboro Ice & Coal Company and the said commission. That as a demand had been made upon a high official of the South- n Railway Company making it necessary for deponent to receive structions from said official of the Southern Railway Company be- re appearing further in the matter, he immediately called upon the st vice president of the Southern Railway Company and finding at the order for delivery of said cars had been referred to the chief ansportation officer of the Southern Railway Company at Wash- gton, D. C., he returned to the office of the corporation commission dvising the said commission that in as much as the order had been eferred to the general manager of the Southern Railway Company, e would have to receive instructions which he had asked for by ire, before he could proceed further with the case.

That on the morning of October 30th, 1903, he notified the clerk f the commission by telephone that he had not received advices from he general manager of the Southern Railway Company. That on he morning of October 31st, 1903, having received a telegram from aid general manager of the Southern Railway Company, to proceed vith the case and while he was preparing to discuss the matter fur- her with the commission, without further notice to him on part of aid commission a peremptory order was served on the first vice resident of the Southern Railway Company signed by Franklin IcNeill as chairman, and attested by the clerk of the commission, rdering that the cars in question be delivered upon the private racks in the yard of the Greensboro Ice & Coal Company within forty-eight hours from twelve noon October 31st 1903.

77 That upon numbers of occasions in matters pertaining to the North Carolina car service association, it had been the custom of your affiant and the North Carolina corporation commis- sion to take such matters up informally with view of adjusting them without the formalities of a trial, that your affiant understood from the course this particular case was taking and had a right to so under- stand, that the case of the Greensboro Ice & Coal Company was pur- suing this course.

That the said Greensboro Ice & Coal Company has never filed a written or formal complaint with the various paragraphs and alle- gations numbered as required by the rules of practice promulgated by the North Carolina corporation commission, and that therefore the Southern Railway Company has had no opportunity to answer

in like manner bringing the matters to issue for a hearing, that there has not been any hearing upon affidavits or the personal testimony of witnesses or by depositions in the above named case before the filing of the exceptions by the Southern Railway Company to the aforesaid order.

Deponents further says that sections 1 and 2 of rule 2, of said North Carolina car service association read as follows:

SECTION 1. On all commodities for unloading or loading, forty-eight (48) hours (two days) free time will be allowed, except that,

For Unloading.

SECTION 2. Seventy-two (72) hours will be allowed for unloading fertilizer, brick, and the following commodities when in bulk only: Cotton seed, cotton seed hulls, coal, coke, fertilizing material, grain, lime, tan bark and dressed lumber in box cars.

Deponent further says, section 11, rule XI, North Carolina car service association reads as follows:

SECTION 2. In case consignees or consignors refuse to pay or unnecessarily defer settlement of bills for car service charges, the railroads shall upon notice to that effect from the manager refuse to switch any cars for such consignee or consignors until such charges are paid.

Deponents further says that on October 9th, 1903, he gave express verbal notice in person in the presence of W. E. Coflin, agent of the Southern Railway Company at Greensboro, to M. W. Thompson, manager of the Greensboro Ice & Coal Company, that unless the Greensboro Ice & Coal Company complied with the rules of the North Carolina car service association, that no cars would be switched to their private track but that all cars consigned to them would be offered for delivery only on public team tracks of the South-
78 ern Railway Company at Greensboro, North Carolina.

Deponent further avers, that the said rules are well known to the Greensboro Ice & Coal Company and were well know- to them before the time the four cars of coal in question were shipped from the mines to the Greensboro Ice & Coal Company. And deponent further states that the four cars of coal the subject of controversy in above entitled cause, were shipped to the Greensboro Ice & Coal Company after it had received said notice. That the said Greensboro Ice & Coal Company having knowledge that the said cars would be offered to them upon arrival upon the public team tracks could have countermanded their orders for the said coal at initial point of shipment after notice aforesaid had been given in behalf of the Southern Railway Company, unless they desired to receive them upon team tracks, but the said Greensboro Ice & Coal Company permitted the said four carloads of coal to be shipped with full knowledge that they would be tendered them on public team tracks and would not be placed upon the private siding in the yards of the Greensboro Ice & Coal Company.

Deponents further says that formal written notice dated Oct. 12th, 1903, was by his instructions served upon the Greensboro Ice & Coal Company by W. E. Coffin, agent of the Southern Railway Company, notifying them that after twelve noon November 17th, no cars would be delivered them except upon public team tracks of the Southern Railway Company at Greensboro, N. C., unless the rules and regulations of the Southern Railway Company governing the loading and unloading of cars were fully complied with.

P. R. ALBRIGHT.

Sworn and subscribed before me this 9th day of February, 1904.

H. L. GRANT, *Clerk.*

79 *Affidavit of R. R. Alley, Car Service Department.* (1.)

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
GREENSBORO ICE & COAL COMPANY ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Guilford:*

Personally appeared before me R. R. Alley, who, on oath says he is car service clerk at Greensboro North Carolina, of Southern Railway Company, and upon the arrival at Greensboro, North Carolina, of Chesapeake and Ohio car No. 17895, loaded with coal consigned to Greensboro R. &. Fur Co., he called on Greensboro Ice & Coal Company to ascertain if said car was not intended for them, and they showed him either an invoice or notice of shipment of the car, and statement said car of coal was intended for them. Deponent further says, said car is one of the four cars, included in the order of North Carolina corporation commission, dated October 31st., 1903, and one of the cars involved in the above entitled cause.

R. R. ALLEY.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

80 *Affidavit of R. R. Alley, Clerk Car Service.* (2.)

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL CO. ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Guilford:*

Personally appeared before me R. R. Alley car service clerk of Southern Railway Company, at Greensboro, N. C. and having been duly sworn, on oath says:

That Southern railway car No. 70,734 was received at Greensboro, N. C., at 11 a. m., Oct. 18th 1903 and was placed on public team track at Greensboro, N. C. on Oct. 23, 1903, remaining there until Nov. 2nd, 1903, when it was moved to Hucomuga Mills siding and remained on said siding until Nov. 14th, 1903.

Deponent further says that he saw said car standing on said public team track between the dates above mentioned.

Deponent further says that Chesapeake and Ohio car No. 17,895 was received at Greensboro, on Oct. 19th, 1903 at 8 p. m., and was placed on public team track of Southern Railway Company at Greensboro, N. C. on Oct. 22nd., 1903, remaining there until Nov. 2nd., 1903, when it was moved to Hucomuga Mills siding, remaining there until Nov. 14th, 1903.

Deponent further says that he saw said car standing on said public team tracks between the dates above mentioned.

Deponent further says that Norfolk and Western car No. 12,565 was received at Greensboro, N. C. at 8 p. m.., Oct. 18th, 1903, said car stood on coach shed track Oct. 19th and 20th, and was placed on public team track Oct. 22nd., and remained there until Nov. 2nd when it was moved to Hucomuga Mills siding, remaining there until Nov. 14, 1903.

81 Deponent further says that he saw said car standing on said public team track during the dates above mentioned.

Deponent further says the Norfolk and Western car No. 23,283 was received at Greensboro, N. C. at 4 a. m., Oct. 22nd., 1903, and placed on public team track at Greensboro, N. C. on same date remaining there until Nov. 2nd., it was then moved to Hucomuga Mills siding and remained there until Nov. 14th, 1903.

Deponent further says that he saw said car standing on said public team track during the dates above mentioned.

Deponent further makes oath that all the above mentioned four cars were not delivered to Greensboro Ice & Coal Company, or unloaded by them during said periods, and when they were moved to Hucomuga Mills siding, as aforesaid, they were in the same condition as when they arrived at Greensboro, N. C., and that none of the coal had been taken or the loads or packages broken in any way

Deponents further says that the reason why the cars were moved to Hucomuga Mills siding was and is that they were blocking the team tracks by remaining so long standing thereon because of the refusal of Greensboro Ice & Coal Company to unload same, and were interfering with the public use of said team tracks and the business at Greensboro.

Deponents further says that said public team tracks are accessible for loading and unloading and have been and are now in common use by the public at Greensboro, N. C. and all the merchants of said city for the unloading and receipt of all merchandise and commodities shipped to Greensboro, North Carolina.

Deponents further says that coal for the gas company at Greensboro and for other parties has habitually been unloading from said team tracks, and the same are now used for that purpose by several members of the public at Greensboro.

Deponent further says that Southern Railway Company has a coal chute which has been specially provided by it and can be used by any member of the public shipping coal to Greensboro, if so desired, and that same was available to Greensboro Ice & Coal Company at any and all times after the arrival of said above mentioned four cars of coal.

R. R. ALLEY.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

82 *Affidavit of W. G. Jeffreys, Yard Conductor.*

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL COMPANY ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Guilford:*

Personally appeared before me W. G. Jeffreys yard conductor of Southern Railway Co., at Greensboro, N. C. and having been duly sworn on oath says:

The Southern railway car No. 70,734 was received at Greensboro, N. C., at 11 a. m., Oct. 18th, 1903 and was placed on public team track at Greensboro, N. C., on Oct. 23, 1903, remaining there until Nov. 2nd, 1903, when it was moved to Hucomuga Mills siding and remained on said siding until Nov. 14th 1903.

Deponent further says that he saw said car standing on said public team track between the dates above mentioned.

Deponents further says that Chesapeake and Ohio car No. 17,895 was received at Greensboro on Oct. 19th. 1903 at 8 p. m., and was placed on public team track of Southern Railway Company at Greensboro, N. C. on October 22nd, 1903, remaining there until Nov. 2nd, 1903, when it was removed to Hucomuga Mills siding, remaining there until Nov. 14th, 1903.

Deponent further says that he saw said car standing on said public team tracks between the dates above mentioned.

Deponents further says the Norfolk and Western car No. 12,565 was received at Greensboro, N. C. at 8 p. m., Oct. 18, 1903, said car stood on coach shed track Oct. 19th and 20th, and was placed on public team track Oct. 22nd, and remained there until Nov.
83 2nd, when it was moved to Hucomuga mills siding, remained there until Nov. 14th, 1903.

Deponent further says that he saw said car standing on said public team track during the dates above mentioned.

Deponent further says that Norfolk and Western car No. 23,283 was received at Greensboro, N. C. at 4 a. m., Oct. 22nd, 1903, and placed on public team track at Greensboro, N. C. on same date remaining there until Nov. 2nd. It was then moved to Hucomuga mills siding and remained there until Nov. 14th, 1903.

Deponent further says that he saw said car standing on said public team track during the dates above mentioned.

Deponent further makes oath that all the above mentioned four cars were not delivered to Greensboro Ice & Coal Company, or unloaded by them during said periods, and when they were moved to Hucomuga Mills siding, as aforesaid, they were in the same condition as when they arrived at Greensboro, North Carolina, and that none of the coal had been taken, or the loads or packages broken in any way.

Deponent further says that the reason why the cars were moved to Hucomuga Mills siding was and is that they were blocking the team tracks by remaining so long standing thereon because of the refusal of Greensboro Ice & Coal Company to unload same, and were interfering with the public use of said team tracks and the business at Greensboro.

Deponent further says that said public team tracks are accessible for loading and unloading and have been and are now in common use by the public at Greensboro, N. C., and all the merchants of said city for the unloading and receipt of all merchandise and commodities shipped to Greensboro, North Carolina.

Deponents further says that coal for the gas company at Greensboro and for other parties has habitually been unloading from said team tracks, and the same are now used for that purpose by several members of the public at Greensboro.

Deponents further says that Southern Railway Company has a coal chute which has been specially provided by it and can be used by any member of the public shipping coal to Greensboro, if so desired, and that same was available to Greensboro Ice & Coal
84 Company at any and all times after the arrival of said above mentioned four cars of coal.

W. G. JEFFREYS.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

85 *Affidavit of S. R. Ellis, Clerk in Yard Office.*

Filed Feb. 9, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District o North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL CO. ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Guilford:*

Personally appeared before me S. R. Ellis, clerk in yard office o Southern Railway Company, at Greensboro, North Carolina, and having been duly sworn, on oath, says:

That Southern Railway car No. 70,734 was received at Greens boro, North Carolina, at 11 a. m., October 18th., 1903 and wa placed on public team track at Greensboro North Carolina, on Oc tober 23, 1903, remaining there until November 2nd, 1903, when it was moved to Hucomuga Mills siding and remaining on said sid ing until November 14th., 1903.

Deponent further says that he saw said car standing on said pub lic team track between the dates above mentioned.

Deponent further says that Chesapeake and Ohio car No. 17,89 was received at Greensboro on October 19th., 1903 at 8 p. m., and was placed on public team track of Southern Railway Company a Greensboro, North Carolina, on October 22nd, 1903, remaining there until Nov. 2nd, 1903, when it was moved to Hucomuga Mill siding; remaining there until November 14th, 1903.

Deponent further says that he saw said car standing on said pub lic team track between the dates above mentioned.

Deponent further says that Norfolk and Western car No. 12,56 was received at Greensboro, North Carolina at 8 p. m., October 18th 1903, said car stood on coach shed track October 19th and 20th and was placed on public team track October 22nd., and remained there until November 22nd when it was moved to Hucomuga

86 Mills siding, remaining there until November 14th, 1903.

Deponent further says that he saw said car standing on said public team track during the dates above mentioned.

Deponent says that Norfolk and Western car No. 23,283 was re ceived at Greensboro, North Carolina, at 4 a. m. October 22nd 1903, and placed on public team track at Greensboro, North Carolina on same date remaining there until November 2nd. It was then moved to Hucomuga Mills siding and remained there until Novem ber 14th, 1903.

Deponent further says that he saw said car standing on said public track during the dates above mentioned.

Deponent further makes oath that all the above mentioned four cars were not delivered to Greensboro Ice & Coal Company, or unloaded by them during said periods, and when they were moved to Hucomuga Mills siding, as aforesaid, they were in the same condition as when they arrived at Greensboro, North Carolina, and that none of the coal had been taken, or the loads or packages broken in any way.

Deponent further says that the reason why the cars were moved to Hucomuga Mills siding was and is that they were blocking the team tracks by remaining so long standing thereon because of the refusal of Greensboro Ice & Coal Company to unload same, and were interfering with the public use of said team tracks and the business at Greensboro.

Deponent further says that said public team tracks are accessible for loading and unloading and have been and are now in common use by the public at Greensboro, North Carolina, and all the merchants of said city for the unloading and receipt of all merchandise and commodities shipped to Greensboro, North Carolina.

Deponent further says that coal for the gas company at Greensboro and for other parties has habitually been unloading from said team tracks, and the same are now used for what purpose by several members of the public at Greensboro.

87 Deponent further says that Southern Railway Company has a coal chute which has been specially provided by it and can be used by any member of the public shipping coal to Greensboro, if so desired, and that same was available to Greensboro Ice & Coal Company at any and all times after the arrival of said above mentioned four cars of coal.

S. R. ELLIS.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

88 *Affidavit of W. E. Coffin, Freight Agent.*

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, in Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL CO., ET AL., Defendants.

Personally appeared before me W. E. Coffin, freight agent of Southern Railway Company located at Greensboro, N. C. and on oath states that Southern Railway car No. 70,734 was loaded with coal at Newcomb, Tenn., and was transported as one continuous, uninterrupted journey from Newcomb, Tenn., to Greensboro, N. C., where it arrived on Oct. 18th, 1903. Deponent further says that he has seen and identifies the original way bill which come with said car. Deponent further makes oath that Norfolk and Western car No. 12,565 was loaded with coal at Bluefield, West Virginia, and was transported by Norfolk and Western Railway Company to Winston-Salem, N. C. where it was delivered to Southern Railway Company and by Southern Railway Company was thence transported over its lines to Greensboro, N. C. as one continuous, uninterrupted journey from the point of origin Bluefield. Said car arrived at Greensboro, Oct. 18th, 1903. Deponent further says that he has seen the original way bill which came with said car and identifies the same.

Deponent further says that from information disclosed in the original way bill which came with Chesapeake and Ohio car No. 17,895 which arrived in Greensboro, Oct. 19th, 1903, he makes oath upon information and belief that said Chesapeake and Ohio car originated at Pratt, in the State of West Virginia, and was
89 transported to Lynchburg, Virginia, where it was delivered to Southern Railway Company and from thence was hauled by Southern Railway Company to Greensboro, N. C. that from the time said car left Pratt W. Va. until it reached Greensboro, N. C., it made one contin-ous, uninterrupted journey through the several States traversed.

Deponent further says that he has seen and identifies original way bill which came with Norfolk and Western car No. 23,283 billed from Hagerstown, Maryland on way bill No. 6172, dated Oct. 11th, 1903; that from information derived from said way bill deponent swears upon information and belief that said car originated somewhere in the State of Pennsylvania and was loaded with anthracite coal and was delivered to Southern Railway at Winston-Salem by its

nnections and was thence transported over the lines of Southern ailway Company to Greensboro, N. C., where it arrived on Oct. nd, 1903. From information and belief derived as aforesaid de- nent swears that said car of coal was transported from its points origin in Pennsylvania over various lines of railway to Greensboro. C. as one uninterrupted, continuous journey from the point of igin to the point of destination.

Deponent further says that the above mentioned cars of coal are e identical cars which were the subject of the order of North Caro- a corporation commission dated October 31st, 1903, and the same ich are involved in the above entitled cause.

Deponent further says that upon the arrival of said above men- ned cars at Greensboro, N. C. he issued and sent to Greensboro Ice Coal Company the usual notice of the arrival of said cars, and noti- d Greensboro Ice & Coal Company that the same were ready to be loaded by said Greensboro Ice & Coal Company, and that unless ey were so unloaded within the 72 hours provided for by the car vice rules, that the usual demurrage charges would accrue.

Deponent further says that the demurrage rules providing for cer- n charges in the event that cars are not promptly unloaded were roughly well known to Greensboro Ice & Coal Co. prior to the time d cars were ordered. Furthermore all bills of lading issued by uthern Railway Company contain a clause by which shippers bind mselves to abide by the car service rules and regulations, all of which was well known to Greensboro Ice & Coal Company.

Deponent further says Greensboro Ice & Coal Company declined to unload said cars unless same were placed on their vate siding or spur track and refused to unload said cars in any er place whatsoever and demurrage charges for storage of said coal reupon accrued, which Greensboro Ice & Coal Company refused d still refuses to pay, and Southern Railway Company declined to ase its lien for said demurrage upon said cars and declined to de- r same to Greensboro Ice & Coal Company until said demurrage accruing in consequence of the wilful neglect of Greensboro Ice Coal Company to unload as aforesaid was paid on said cars.

Deponent further says that on October 12th 1903 Southern Rail- y Company issued a formal notice to Greensboro Ice & Coal Com- ny notifying them that thereafter it would only deliver cars con- ned to Greensboro Ice & Coal Company upon its public team tracks Greensboro North Carolina that this notice was rendered necessary order to protect the equipment of Southern Railway Company and ause of the action of Greensboro Ice & Coal Company in arbi- rily declining to conform to car service rules adopted principally nsure the expeditious handling of cars for the benefit of the public l general transportation interests.

W. E. COFFIN.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

91 *Affidavit of E. H. Coapman, Supt. So. Div.*

Filed Feb. 9th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
GREENSBORO ICE & COAL CO. ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Guilford:*

Personally appeared before me E. H. Coapman who on oath says that he is superintendent of the Greensboro division of the Southern railway, with headquarters at Greensboro, North Carolina, that Greensboro Ice and Coal Company, through its president, Mr. W. E. Worth, made application to Southern Railway Company on Sept. 5th, 1902, for a side track 375 ft. long to be introduced into its yards at Greensboro, N. C., that after the making of surveys and the preparation of blue prints, etc., the matter was duly taken up between Greensboro Ice & Coal Company and Southern Railway Company and it was found that in order to lay this track it would be necessary to cross the property of one, W. D. McAdoo, whereupon Greensboro Ice & Coal Company, in compliance with its obligations duly entered into in said formal application, undertook to get the necessary rights of way from said McAdoo, but he declined to give them, in consequence of which said track was never built. Thereafter in August 1903 a representative of the Greensboro Ice and Coal Company called on deponent and asked if there was any objection to making a change in the spur track then running into the yards of Greensboro Ice & Coal Company to which deponent replied that Southern Railway Company would make no objection provided Greensboro Ice and Coal Company would make the change at their own expense. No promise or agreement was made to or with said Greensboro Ice & Coal Company at that time or any other time in reference
92 to the proposed change in said spur track, and there was and is no agreement express or implied by and between Southern Railway Company and Greensboro Ice & Coal Co. whereby Southern Railway Company has obligated itself to use at all or to continue to use said spur track for the delivery of cars thereon, and it was and is entirely optional with Southern Railway Company to continue or discontinue the use of said spur track in the delivery of cars thereon. In pursuance of above conversation Greensboro Ice & Coal Company proceeded to make the changes in said spur track and the same was shifted 14 feet from its original position and was raised 8 feet 8 in-

ches, and a trestle put in, at the expense of Greensboro Ice & Coal Company and under their supervision Southern Railway Company merely as a matter of accommodation having furnished standard plans and specifications for said trestle in order to insure the safety of same. Furthermore, merely as a matter of accommodation and in no sense undertaking to thereby assume an obligation to operate for all time or any time said spur track, Southern Railway Company allowed its road forces to lay the rail as fast as Greensboro Ice & Coal Company did the work, but there was no question of contract covering the change in this spur track and deponent is informed and believes that the present spur track now crosses lands of the said McAdoo who declined to grant rights of way at the solicitation of Greensboro Ice & Coal Company when its first application was made.

Deponent is informed and believes that said McAdoo leases to Greensboro Ice & Coal Co. its present coal and wood yards and the land upon which its plant is located and also believes that as a matter of accommodation to said Greensboro Ice & Coal Company, said McAdoo permits the present spur track to cross his property.

Deponent further makes oath that said Greensboro Ice & Coal Company took up the rails of the old spur track on or about Sept. 15th, 1903, and completed the changes aforesaid on or before Oct. 2nd, 1903.

E. H. COAPMAN.

Sworn to before me this 6th day of February, 1904.

W. R. LAND,
Notary Public.

93 *Affidavit of R. C. Strong, Att'y. Filed Feb. 9th,* 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO., Complainant,
v.
GREENSBORO ICE & COAL CO. ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Wake:*

Personally appeared before me R. C. Strong, who, on oath says that letter, copy of which is hereto attached marked "Exhibit A" and signed "E. J. Justice" was duly received by him through the mails, and that said E. J. Justice is attorney of record for Greensboro Ice & Coal Co. in the proceedings had before North Carolina corporation commission. Deponent further says that in a conversation with one of the members of the North Carolina corporation

commission, to wit: Mr. McNeill, chairman, he, said chairman, stated that in case of disobedience of the order of said commissioners, dated Oct. 31st, 1903, requiring Southern Railway Company to place four cars of coal on private siding of the Greensboro Ice & Coal Company that the North Carolina corporation commission intended and proposed to do everything in its power to enforce observance of said order, and that Southern Railway Co. would, in his opinion, lay itself open to $500.00 a day penalties, in case of disobedience; and deponent understood therefrom that said commissioners threatened to institute suits for recovery of said penalties under provisions of chapter 164 of Public Laws of North Carolina, and acts of 1899, and amendments thereto.

ROBERT STRONG.

Sworn to before me this 8th day of February, 1904.

GEO. L. TONNOFFSKI, *D. C.*

94 DECEMBER 28TH, 1903.

R. C. Strong, Esq., attorney at law, Raleigh, N. C.

DEAR SIR: *In re* Greensboro Ice & Coal Company *vs.* Southern Railway Company, I suppose you have fully determined to prosecute your appeal and have the courts pass on the question raised by your exceptions, but before the matter goes further I desire to say in explanation of the course my client will pursue, if the litigation continues, that he is not moved by any feeling or influence further than that he will not permit, if he can avoid it, the railway company to ignore his rights. Mr. Thompson would be very glad if the matter should stop where it is, and for you to abide by the decision of the corporate commission. In entertaining this feeling, he is not at all influenced by a fear or any apprehension that the decision of the court will be adverse to him. If you should abide by the action of the corporation commission, and its decision, Mr. Thompson would not feel like prosecuting the railroad company for penalties and bringing an action for punitive damages, as he has the right to do. "In other words, if he brings such action, it will be because the course pursued by the railroad company makes him feel that he is beyond question justified in asserting his legal rights in these actions. He is not the kind of a man who is on the lookout for a technical violation of a penal statute that he may profit by a suit brought for penalties, but he is the kind of a man, as your client has probably learned, who, when he feels his rights are ignored and he is forced into a fight, can fight vigorously Feeling that if he were to bring actions without saying this much to you, his attitude might be misconstrued, he has concluded, after consultation with counsel, that it would be best to set himself right by addressing this letter to you. Our court comes on the 18th day of Jan., and we would be glad to have a reply to this in time to have summons served returnable to that term of court, if we desire to do so. I have not known whether to address this

letter to you alone or to your associate counsel also, and I have explained the situation to Mess. King and Kimball, but leave you to communicate with Mr. Northrop, if you desire to do so. I have not written to him.

With compliments of the season, I am,

Very truly yours,

(Signed) E. J. JUSTICE.

Order Continuing Restraining Order Referring to Standing Master and to Consider Proposition. Filed Feb. 10th, 1904.

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

In the Circuit Court. In Equity.

SOUTHERN RAILWAY COMPANY
v.
GREENSBORO ICE AND COAL COMPANY ET AL.

And now after full argument by counsel it is ordered by the court that the motion of complainant to continue the restraining order to the hearing be allowed and this matter be referred to the standing master under the rules of equity, to take the testimony and find the facts.

A proposition having been made pending the argument to regard this as a final hearing, said proposition being pending, it is ordered that if consented to by all counsel in writing and accompanied by a statement of facts agreed within ten days, there being some controversy as to the facts, which the court cannot determine from the facts now before it, the court will consider this proposition.

February 10th, 1904.

THOS. R. PURNELL,
U. S. Judge, &c.

97 *Report of the Master, Testimony, and Exhibits.*

Filed August 27th, 1904.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

v.

GREENSBORO ICE AND COAL COMPANY, FRANKLIN MCNEILL, Samuel L. Rogers, and Eugene C. Beddingfield, Defendants.

Report of the Master.

The undersigned, to whom was referred the taking of testimony and the findings of facts in the above entitled suit, respectfully reports as follows:

Nature of Suit.

This is a bill in equity to perpetually enjoin the defendants, or either of them from bringing suits for penalties and damages by reason of the — complainant to place upon the trestle of the defendant ice & coal company, four certain cars, and a failure to comply with the order of the defendants, commissioners of the North Carolina corporation commission, to so place said cars; all of which will more fully appear in the said bill of complaint.

Findings of Fact.

Much testimony was taken in behalf of the respective parties, and at its conclusion the master requested that each party direct his attention in writing to such facts as they deemed material to be found. The master has not considered it his duty to take up all these requests and adopt or reject them in the language employed. He has made use of them only for the purpose of aiding him in passing upon such facts as were deemed material by the parties. Some of them embody propositions of law (which are not referred to the master) and some of them involve repetitions, some require modifications, and others are deemed unnecessarily long and also involve evidential matter. So the master has deemed it best to employ, to some extent, his own language and to frame his report in the usual manner. The master finds as follows:

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(1.)

(*a.*)

That the Southern Railway Company is a corporation, created by, and existing under the laws of the State of Virginia, and is a citizen and resident of the said State of Virginia. That all of the defendants, to-wit, Greensboro Ice and Coal Company, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, are citizens and residents of the State of North Carolina.

(*b.*)

In order to present the views of the respective parties as to the jurisdictional amount, the following facts are found:

That the right of the Greensboro Ice & Coal Company, or of an individual shipper or consignee to have cars transferred and switched upon his private siding, or spur track, irrespective of the rules and regulations of the Southern Railway Company, involves the right of the Southern Railway Company to conduct its business, both State and interstate. That if all shippers or consignees in North Carolina had the right to have cars switched and placed according to their orders, and irrespective of the rules and regulations of the Southern Railway Company, it would entail a loss to the Southern Railway Company much in excess of two thousand ($2,000) dollars. That the right of the Southern Railway Company to conduct and manage its interstate business at Greensboro, N. C. and various stations in the said State, amounts in value to many thousands of dollars, far in excess of two thousand ($2,000) dollars.

That the right of the Southern Railway Company to conduct its interstate business at Greensboro, to dispose of its rolling stock and distribute it, and to refuse to permit its cars to be placed on private sidings according to its reasonable rules, is of great value to them, and amounts to many thousands of dollars far in excess of two thousand ($2,000) dollars. (Choapman's testimony, pp. 42, 43, Millers' testimony pp. 43, 44, 34, 40.)

That every day between the hours of twelve noon and one thirty the Southern Railway Company has, arriving at Greensboro, N. C. a mail train from the North, and a mail train from Goldsboro, N. C.,

99 one from Mt. Airy, N. C., one from Danville, Va., one from Winston-Salem, N. C., one from Jacksonville, Fla., one from New Orleans, La., and in addition there daily arrives at Greensboro, N. C. between noon and 1:30 a train of merchandise from Lynchburg, Va., another from Richmond, Va., and ordinarily two from Norfolk, Va. All of these trains arrive about the same time and if the Southern railway was obliged to get a car out of one of these trains, or was obliged to place a car on a certain siding at a certain time between these hours under the orders and directions of the private shipper, or under the orders and directions of the North

Carolina corporation commission, and irrespective of its own reasonable rules and regulations, it would mean detention and delay and damages not only to interstate freight, but the United States mail and passengers. Ordinarily during other hours except in cases of unusual congestion, which rarely occurs, cars can be placed on the said spur track and trestle within twenty-four hours of their arrival without interfering with the business of the railroad company, either State or interstate, and it does not inconvenience the railroads, or interfere with its track or business, to place cars on the said spur track and trestle, any more than it would on any other spur track, that is to say, that this can be done in due course of business and under reasonable rules and regulations of the company. (Choapman pp. 45, 46.)

In the event of a congested condition by reason of the number of flat cars shipped to Greensboro, such condition would be relieved to some extent by using the said spur track or siding of the ice and coal company, for the purpose of placing the said company's cars on the siding. (Albright 25.)

That the Greensboro Ice & Coal Company does a business which involves a shipment to it of about three hundred and sixty-five cars per year (see answer p. 5) and two hundred cars per year, according to its witness Thompson (p. 85). That it pays out freight in the neighborhood of $15,000 per year. That the said ice and coal company claims that it could not profitably conduct its business without the use of its private siding, and that it will ultimately have to quit the business if such track cannot be used (answer of ice & coal company p. 6, Thompson's testimony p. 88, Thompson's letter to Col. Andrews, Oct. 21, 1903, p. 10 Matthews' testimony p. 123.

That the amount of the profits of the said ice and coal com-
100 pany does not appear in evidence, but the business transacted largely exceeds the sum of two thousand ($2,000) dollars, the freight paid by the company being about fifteen thousand ($15,000) dollars per year. If the said ice and coal company had to unload all of its freight on the team tracks, other than the siding and trestle in question, the said company could not profitably conduct its business (Thompason p. 88). The amount of loss or inconvenience to either party by actually placing the four cars in question upon the side or spur track or by failure to place the same would not, and did not amount to two thousand ($2,000) dollars.

That the North Carolina corporation commission has not, so far as the testimony discloses, attempted to interfere with the business or management of the plaintiff company, except to the extent of requiring it to place the said four cars on the defendant company's siding; nor has the defendant company asked any further interference with said business management. The extent of said interference will more particularly appear by the order made by the North Carolina corporation commission on October 31, 1903. See page — and p. 12, printed transcript of record, which record accepted as testimony herein was placed in evidence. See Exhibit —.)

(2.)

That on October 31, 1903, the North Carolina corporation commission, upon complaint of the said ice and coal company (pp. 1, *et seq.* printed record, Exhibit —) made an order requiring Southern railway within forty-eight hours after service of said order to place four cars of coal consigned to Greensboro Ice & Coal Company, on the private siding or spur track of the Greensboro Ice & Coal Company, at Greensboro, N. C. That four cars of coal comprehended by the said order were numbered and lettered as follows:

Southern	70734
Chesapeake & Ohio	17895
Norfolk & Western	23283
Norfolk & Western	12565

(Thompson's testimony p. 94, Coffin's testimony pp. 33, 54, Exhibits "G" and "H").

That one of four said cars belonged to the Southern Railway Company, two of them being the property of the Norfolk and Western Railway Company, and one of them the property of the Chesapeake & Ohio Railway Co., (testimony pp. 53, 54).

101 That on all of said four cars, except the single one belonging to it, the Southern Railway Company, was obliged to pay the railway companies ow-ing the cars, a per diem of twenty cents per day for each day such car remained on its line, after the expiration of the first three days subsequent to the receipt of the car on the rails of the Southern Railway Company, (Lake's testimony p. 193, Exhibit — showing the movement of cars p. 55.)

That each foreign car which remains on the rails of another railroad company exceeding thirty days, subjects the delinquent road to a penalty of a dollar per day, until the car is returned to the road owning it (p. 193 testimony).

That all three of the said cars were on the rails of the Southern Railway Company exceeding three days from the time they were received, and a per diem of twenty cents per car had to be paid by the Southern Railway Company. That the four cars comprehended by the said order of the North Carolina corporation commission, were loaded with coal in the States of Pennsylvania, West Virginia and Tennessee respectively, and each and every one of said cars of coal was transported over lines of the Southern Railway Company and connecting lines, as one contin-ous uninterrupted journey through several different States to Greensboro, N. C.

That at the time said order of said North Carolina corporation commission was made, and both prior and subsequent thereto, *and* said coal remained loaded on the said cars in the original unbroken package in which it began its contin-ous uninterrupted journey from the States of Tennessee, W. Virginia and Pennsylvania, and said coal and said cars were still in the possession of the Southern Railway

Company, undelivered to consignee (Alley's testimony p. 56, E testimony p. 59.)

It is admitted in the answer, and also upon the taking of t mony that said four cars loaded with coal as aforesaid, and tr ported as above mentioned, were and are interstate commerce.

(3.)

That the Southern Railway Company declined to switch t cars upon the private siding or trestle of the ice and coal compa because it was claimed that the latter company had refused to com with the rules of the North Carolina Car Service Associat
102 adopted by the Southern Railway Company, to expedite use of equipment in the public interest (pp. 19, 20, 29, 39, 40, 75, and 76 of testimony).

That the general rules adopted by the Southern Railway Comp known as rules of North Carolina Car Service Association, are sonable and their object is not to produce revenue, but to facili the distribution of equipment and the expeditious handling freight, and to what end to enforce an equal, reasonable and unifo charge for the detention of cars, when the cars are detained over free time prescribed in the rules. That they have had this eff and have operated and do operate to the mutual benefit of the r road and the public and have reduced the average time of detent of cars from five days to one and one-fifth days, and have increa the number of cars available for public service (pp. 6, 44, 30, 40).

That the terms and provisions of these rules of the North Ca lina Car Service Association, adopted by the Southern Railway Co pany, was well known to said ice & coal company which has do business under them for some years (pp. 5, 7 148). That amon the provisions of said rules were the following:

"SEC. 1 of rule 2. "On commodities for unloading or loadi forty-eight (48) hours, two (2) days' free time will be allowed, cept that sec. 2, seventy-two (72) hours will be allowed for unlo ing fertilizer, and the following commodities when in bulk onl cotton seed, cotton seed hulls, coal, coke, fertilizing material, grai lime, tan-bark, and dressed lumber in box cars."

Section 2 of rule 11. "In case consignees or consignors refuse pay, or unnecessarily defer settlement of bills for car service charg the railroads shall, upon notice to that effect from the manager, fuse to switch any cars for such consignees or consignors, until su charges are paid." (See p. 5 testimony). See Exhibits — and — being copies of the North Carolina car service association, and th rules of the North Carolina corporation commission which we placed in evidence and are annexed as part of this report.

That the Southern Railway Company, on Oct. 12, 1903, issued notice to the said ice & coal company that commencing at 12 noo Oct 17, 1903, it would only deliver cars on the public team trac

of the Southern Railway Co., at Greensboro, N. C. (p. 4 printed record, Coffin's letter).

103 That said four cars of coal came on the yards of the Southern Railway Company at Greensboro, N. C. after October 17th, 1903. Proper notices were sent to the said ice and coal company of their arrival, and the cars were marked up to the public team tracks of the Southern Railway Company at Greensboro, and actually placed thereon, and the delivery tendered to the said ice and coal company. That said ice and coal company declined to receive or unload said cars at any other point whatsoever except on their private siding or trestle (Thompson's letter to Franklin McNeill, dated Oct. 20th, 1903; testimony, pp. 11, 17, 57, 74, 75, 87, 89, 90, 92, 93, 94 and 95.)

That the refusal to unload said cars was not because of any alleged defect in the notices, but because the said ice & coal company required and demanded that the said cars should be placed on their said private track or trestle. That said four cars of coal reached Greensboro, N. C. between Oct. 18th and Oct. 22nd, 1903 (see Exhibit "H") and were placed on the public team tracks and there remained for the purpose of being unloaded by the said ice and coal company until Nov. 2nd, 1903, when they were removed because they were blocking the team tracks and interfering with the public use thereof (pp. 57 and 59 testimony.)

According to the rules of the North Carolina car service association, adopted by the Southern Railway Co., seventy-two free hours' time is allowed for unloading cars (testimony p. 5) and these four cars remained on the team tracks much more than seventy-two hours from the time they arrived (October 18th to 22nd, 1903) and the 31st of Oct., the date of the commission's order, and, therefore, when such order was passed, demurrage was actually due upon these four cars, provided, that the court shall hold upon the facts that it was not the duty of the Southern Railway Company to place the said cars upon the said side track or trestle of the said ice and coal company, as it was requested to do. That no demurrage has been paid by the said ice and coal company. That the said ice & coal company had first refused to pay freight on these four cars of coal unless the same were placed as instructed on their private siding (testimony p. 17).

104 That on October 27th, 1903, immediately upon receipt of letter of the North Carolina corporation commission, dated Oct. 26, 1903, and on account of said letter said ice and coal company paid the freight on the said four car loads of coal, (see Thompson's letter to McNeill, dated Nov. 3, 1903, p. 45 printed record).

That said four cars having reached Greensboro between Oct. 18th and 22nd, 1903, and seventy-two hours' free time having expired long prior to Oct. 27th, 1903, demurrage was due on said cars on Oct. 27, 1903, the date the freight was paid, provided the court shall hold upon the facts that it was not the duty of the Southern

Railway Company to place the said cars upon the siding or trestle the said ice and coal Co., as it was requested to do.

That the notice of Oct. 12, 1903, declining to switch cars to t private siding of the ice and coal company, and the refusal to liver the four cars in question, was alleged to have been based up the refusal of the ice and coal company to "comply with car servi regulations" etc.

The master finds that the alleged refusal to comply with said rul consisted in the refusal of the said ice and coal company to pay a account for demurrage of some one hundred and forty-six $146 dollars claimed to be due on certain thirteen cars previously deli ered, which will be mentioned hereafter in this report. This clai was denied on the part of the said ice and coal company. Had been paid, the four cars in question would, in the opinion of the ma ter, have been delivered upon the trestle of the ice and coal company as requested, and the refusal to so deliver was solely on that groun (Albright's testimony pp. 14, 19, 29, McNeill 127, 123).

That the said ice & coal company was solvent and was so known to the Southern Railway Co. (p. 127, 198).

That when the said four cars arrived the work upon the said sid ing and trestle had been completed and they were in good condi tion for delivery and for unloading of coal and was so known to the agents of the railway company which had control of placing cars, (pp. 12, 51).

That at that time the said Southern railway could have switched said cars on the said siding within twenty-four hours after
105 their arrival and the ice and coal company have emptied the coal from them and left them to the control of the railroad company within three hours after they were so switched respectively, (Choapman's testimony pp. 45, 51, Albright's pp. 12, 28, Thompson's 80.)

That it would in no way have interfered with the prompt, economical, and easy handling of this or other freight or business, for the Southern railway, to have placed the four cars as requested.

The trestle can, in the ordinary course of business, be used by the Southern Railway Company for unloading freight consigned to the ice and coal company with ease, and such freight can be unloaded there in less time than would be involved in unloading it elsewhere. It is easier to unload coal from the trestle of the ice and coal company than from the public team tracks (pp. 134, 135, 138 and 139).

(4.)

(*a.*)

In reference to the side track and trestle, I find as follows:

About 1890 the ice and coal company leased the property upon which its plant is situated, and which embraces its yard, of one W. D. McAdoo, who owned and now owns the same. This lease was renewed in 1899, and is still existing.

At the time of the first lease the Cape Fear & Yadkin Railroad Company had a short spur track extending from its main track to within three or four feet of the yard of said ice and coal company. It could accommodate only one car so as to be conveniently unloaded.

In the spring of 1891, or some time thereafter, the said track was extended within the yard of the said ice and coal company, so that in 1895 it had reached a point very near the boilers of said company. Worth pages 103-4-6.

The extension was made by the Cape Fear & Yadkin Railroad Company at its own expense and upon oral agreement, at the instance of the said ice & coal company, and for its accommodation. The terms of this agreement do not appear, pp. 103-104.

In 1895 it was further extended by the ice and coal company.

This was all done before the renewal of the lease of Me-
106 Adoo and the purchase of the Cape Fear and Yadkin Rail-road Company by the Southern Railway Company in 1899.

Ever since the extension of said track into the yard of the said ice & coal company the said Cape Fear and Yadkin Railroad Company, and its successor, the Southern Railway Company, have been delivering cars over said track to the yard of the said ice and coal company, in order that the same might be unloaded by the said company.

That that part of the spur track outside of the yard of the ice & coal company had also been used by the railroad companies for the purposes of shifting their cars, for holding dead cars, and in some instances, unloading for persons near the said track. There has been no objection to such use of said track by the ice and coal company, pp. 107, 106.

That said extension from the railway's right-of-way to the yard of the ice and coal company passes over the land belonging to W. D. McAdoo and the Guilford rolling mills, and neither the Southern Railway Company, nor the ice and coal company have any legal right to use the same, there being no written grant of easement or license, the ice and coal company having only a right, under its lease from McAdoo, to ingress and regress for ordinary vehicles.

That they have been using the said land by suffrance of the said owners, and the said owners have made no objection, and taken no steps to prevent such use, and that such use has been, and now is permitted by said owners, though once or twice the secretary of the said mills has complained of it as a nuisance, and McAdoo has threatened to have compensation made him.

The matters complained of by the ice and coal company have in no way been influenced by any interruption or threat of interruption by the owners of said land.

The ice and coal company desired to construct a trestle within its yard for the more convenient unloading of cars, and this involved the raising of the existing track and the moving of it, or a part of it a short distance, 10 or 12 feet south.

107 There was a grade of several feet from where, or near where the track left the railway right of way to the proposed trestle,

so that the track was not only to be elevated within the yard, but also outside of it, the proposed removal still leaving the track to pass over the land of other parties above named. Application to make these changes was made to the Southern Railway Company about the first of Sept., 1903. The permission was granted, the agreement being that the ice and *caol* company should do the entire work at its own expense, including the grading, etc. except the removal and laying of the track, which the Southern Railway Company agreed to do, or supervise when the work was ready, using their own iron (the same which was already there) and its spikes, etc. Plans were exhibited and agreed to, and the work commenced about the 8th or 9th of September, 1903, (pp. 157, 199) and completed about the 29th or 30th of September, 1903.

(*b.*)

There was no written or express contract on the part of the Southern Railway Company in respect to the use of the said track, but considering all of the circumstances, the original extension of the track, the using of the same constantly thereafter by the Cape Fear and Yadkin Railroad Company and the Southern Railway Company for the benefit of the ice and coal company as well as for itself, the changes made under its permission for the erection of the trestle and the incidental change of the track, its participating in the final work by changing the rails etc., induces the master to find, and he so finds, that there was an implied agreement that said track should be adopted and treated, so far as the ice and coal company was concerned, as a track for the delivery of its cars upon its trestle, under the reasonable rules and regulations of the said Southern Railway Company, this implied agreement to continue so long as the said track was maintained by mutual consent.

It is admitted that during the period between the com-
108 mencement and the completion of the work, no cars could be received or unloaded within the yard of the ice and coal company

It is the custom of the Southern Railway Company to construct private sidings for the use of shippers of large quantities of freight (pp. 25, 45) but it is not the policy of the said railroad to do so except under contract, the printed form of which is in evidence, such contract containing a provision securing the acquisition of necessary rights of way etc. pp. 49, 50.

(*c.*)

There was a standing order on the part of the ice and coal company that its cars should be delivered upon its yard. There appears to have been no such standing order in respect to the delivery of cars on the spur track outside of said yard (pp. 110, 167, 172, 170, 162) except the request in respect to thirteen cars arriving after the be-

ginning and before the completion of said work, which will be considered hereafter. There was no contract to deliver cars on the track outside the yard. P. 110.

This standing order was given to Mr. Alley after the track had been torn up in the yard (p. 81) and about the time of the beginning of the construction of the trestle. See pages 157, 169, 199.

(*d.*)

In respect to the said thirteen cars it is claimed by the ice 109 and coal company that it designated this spur track outside of the yard as a proper and accessible point of delivery, and hat the complainant failing to comply, could not claim demurrage ecause of the failure or refusal of the said ice and coal company to eceive them at any other point. It is also contended that proper otices were not given and also that the cars were not actually ffered or placed at any other accessible point.

The complainant contends that the failure or refusal to receive the ars at any other accessible point was not because of any defect in the otices (such as the omission of the weights and charges), but beause the ice and coal company did not intend to receive them anyhere else but on this spur track.

The complainant further contends that up to about the 14th of eptember the track was occupied by other cars, for other persons, d that after that time, as well as before, the use of the said spur ack was unsafe, and that a proper regard for the safety of its equipent required that said track should not be used until completed.

The master finds that from the 9th to the 14th of September the d spur track was occupied by the Woodruff and Townsend cars, e of them from the 9th to the 11th, and the other from the 12th the 14th. That the ice and coal company did not have the exsive right or priority to have cars placed and unloaded on said ur track. Worth pp. 106–107, Thompson 149.

That one of the thirteen cars arrived on September 9th, 1903, and e of them on September 10, 1903 while the track was so occupied, remaining ten arriving between the 14th and 19th of September, 03.

That the track had been spiked down on the 14th of Sept. by the way company as unsafe for their equipment, etc. After this date, preponderance of testimony establishes that no other cars were upon said track until the completion of the work on the 29th of t. certainly it was not generally used for the purpose of delivery unloading .

he work was commenced by excavating inside of the yard of the nd coal company near the fence, and the rails were torn up inside and also several feet outside of the fence.

After about a week or more the building of an embankment or "fill" was commenced outside of said yard, and some feet h of the existing track, preparatory to a removal of the rails on it,

to a greater elevation, the dirt being taken from the excavation inside of said yard.

On the 14th of Sept., the end of the track, within several feet of the fence had been "jacked up," leaving the sills hanging. There was testimony tending to show that about or after the 14th the "jacking up," or removal of the dirt from under the rails, extended some distance along the said spur track, making it dangerous to put cars upon it. There was testimony to the contrary. There was a fall of some feet towards the yard, necessitating the use of brakes, or "choking," the new track, when completed, being a reversal of this grade some distance in order to meet the necessary elevation of the trestle. The work was being done by the ice and coal company under its supervision and control, by its contractor, the Southern Railway Company having nothing to do with it except to shift the rails to the new track when all was ready, pp. 79 and 179.

While I have much difficulty in reaching a conclusion as to the condition of said track, the preponderance of testimony, I think, establishes that there was sufficient space on the track which had not been removed, to accommodate two cars, from where the track was first torn up several feet from the yard of the ice and coal company, and that it was possible up to within two or three days of the completion of the work for the Southern Railway Company to have placed and unloaded cars upon it.

In not using, however, the said track for delivery and unloading of cars within that period, that is, from the 14th of September to within two or three days of its completion, I find that under the circumstances above mentioned and the testimony, it exercised a reasonable degree of prudence in respect to the safety of its equipment and the orderly conduct of its business. The testimony referred to by the respective parties is on pages 161, 162, 165, 166, 169, 171, 175, 177, 178, 179, 180, 182, 183, 184, 185, 79, 81, 87, 91, 92, 114, 115, 116, 135, 139, 141, 201, 202, see also Wells' testimony.

111 (*e.*)

The ice and coal company requested the Southern Railway Company to place these cars on the spur track outside of the fence, and designated no other place for delivery. The Southern Railway Company, after such request and designation, did not actually place any of the thirteen cars except perhaps one or two at an accessible point of delivery, Thompson p. 83. The request was not for each car, but a standing order (p. 157) given to one Alley, an officer of the Southern Railway Company, and but once. The ice and coal company never designated any other point, except upon the said spur track. Pages 100, 90.

There were other team tracks of the Southern Railway Company where the unloading of coal would have been feasible (Thompson 96), (and the Greensboro Gas Company and many others unloaded coal from them, (pp. 124–125), though not as convenient and inex-

pensive as the said side track. The unloading on the team tracks would render the business of the ice and coal company unprofitable.

There were several coal bins and chutes on the public tracks, but these could not always be relied upon, owing to the demands of other shippers. The bins were filled at the time covered by this controversy, Mathews, p. 123. The notices of the arrival of all of said cars, did not it seems, contain the weight, or amount of charges.

(5.)

The master finds that the North Carolina corporation commission threatened to institute suits against the Southern Railway Company for heavy penalties on account of any failure to obey said order of October 31st, 1903, (page 66).

That the said ice and coal company threatened to institute suit against the Southern Railway Company for heavy penalties and damages on account of failure to obey said orders. Testimony p. 68, article 8, answer of the said ice and coal company. See also pp. 66 and 131.

(6.)

(*a.*)

There does not appear to be any substantial conflict of testimony as to the nature of the proceedings had before the North Caro-
112 lina corporation commission. It appears that on the 20th of October, 1903, a letter from M. W. Thompson, on behalf of the ice and coal company addressed to the said commission was received by them (printed record page 1). It was in the form of a letter, and the formal requirements of the rules of practice of said commission as to sections, the numbering of the same, etc., were not observed.

The commission, however, treated the letter as a complaint but did not serve any formal notice upon the Southern Railway Company, or its agents.

On the 26th of October, 1903, the commission "phoned" Mr. Albright, manager of the car service association, to come to its office. The answer was that he was not in the city, and the commission then requested that he come to the office of the commission upon his return.

Some days soon after, Col. A. B. Andrews, first vice president of the Southern Railway Company (who is a proper person upon whom service could be made), visited the office of the commission upon other business, and after this was concluded, this matter (the subject of Mr. Thompson's letter) was mentioned to him. He stated that Mr. Albright had been to Greensboro and investigated the matter and explained it to them.

On the return of Mr. Albright on "perhaps" the 29th of October

1903, he went to the office of the commission. There the letter of Mr. Thompson was read, or its contents made known to him, and the matter was discussed. Mr. Albright informed the commission that, as he understood, the contents of the letter had been referred to the general manager of the Southern Railway Company, at Washington, D. C., he would have to receive instructions before proceeding with the case.

During the discussion Mr. Albright said he had been at Greensboro and had investigated the matter fully, and he then gave his version, claiming that the ice and coal company had not complied with the car service rules in that it owed the Southern Railway Company demurrage charges from some one hundred and forty ($140) to one hundred and forty-six ($146) dollars, which they had refused to pay. He did not deny the solvency of the ice and coal company, admitted that the four cars were there, and that they had been requested to deliver them on the siding of the ice and coal company.

113 Upon being asked whether there was any complaint as to withholding cars, or the abuse of cars on this track, he answered in the negative. Other matters were mentioned, and the commission told him that they thought that upon his own showing, the cars ought to be placed.

He did not ask to continue the matter, or to have another hearing, nor did he say that there was any additional fact he wanted to prove. He said the matter had been referred to General Superintendent Aekert, in Washington, that he had not heard from him, and that he would probably hear from him soon and have instructions. The commission waited that day, the 29th, and on the 30th Mr. Albright informed them he had not heard from Washington, but was expecting to hear. On the 31st the commission, not hearing anything further from Mr. Albright, made the order in question. The order was served upon Col. Andrews that day. McNeill 126 *et seq.* Albright 2 *et seq.* Andrews' testimony.

Col. Andrews stated that such matters were referred by his company to Mr. Albright, and that he (Andrews) never attended to this department.

The chairman of the commission testifies, and I so find, that these proceedings were not in conformity with the rules of practice of the commission, and that the commisison did not follow them strictly except in formal matters; that complaints were made by letter, and a copy would be sent to the railroad company with the request to answer. Also that they were in "substance according to our (their) usual say of doing business," and that where Mr. Albright had charge of the matter they usually phoned and asked him to come to the office of the commission and "if when he came he did not know the facts, as he often did not, he would ask for time to investigate the matter and make a further report and that was given."

No witnesses were sworn in this matter, nor any issue joined by pleading, nor any other hearing, except as above mentioned.

(*b.*)

On the 31st day of October, the day the order was made, Mr. Strong, representing the Southern Railway Company, as attorney, had a conversation with Mr. McNeill, chairman of the com-
114 mission, as to the time the order went into effect, etc. and afterwards, on November 3rd exceptions were filed to said order by the Southern Railway Company, printed record p. 19.

The hearing of these exceptions was had on November 12, 1903, at Greensboro, when witnesses were sworn and examined, and arguments made by counsel for the respective parties.

On December 10, 1903 the commission made an order overruling the exceptions, thus leaving its order of the 31st of October in effect. Printed record p. 24 Aug. 27th 1904.

(P. 448 to 452 of this transcript) Cl. 6, No. 621.

Respectfully submitted.

JAS. E. SHEPHERD, *Master.*

Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, are sent as part of the testimony.

J. E. S.

For these exhibits see pages 317 to 600 inclusive except No. 1 which will be found in Ex. 12 page 420 to 423 of this transcript.

(H L. GRANT, *Clerk.*)

15 *Testimony Before Special Master.*

Filed Aug. 27th, 1904.

NITED STATES OF AMERICA:

astern District of North Carolina. In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh. Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

EENSBORO ICE & COAL COMPANY, and FRANKLIN MCNEILL, Samuel L. Rogers and Eugene C. Beddingfield, Defendant.

Pursuant to notice, the parties appeared before the standing mas- at Greensboro, North Carolina, on the 17th day of March, 1904, complainant being represented by C. B. Northrop, King and mball and F. H. Busbee, and the defendant being represented by H. Battle, E. J. Justice and A. W. Cooke.

Pleadings read by counsel.

It is admitted that the Southern railway is a corporation organized existing and operating under the laws of the State of Virginia

P. R. ALBRIGHT, witness in behalf of complainant, being duly sworn doth depose and say:

Examined by Mr. NORTHROP:

Q. State you- name and position.

A. P. R. Albright, at the time of this controversy manager of the North Carolina Car Service Association.

Q. How long have you been engaged in that position?

A. From August 1898 until Mar. 1st, 1904.

Q. What were your duties generally?

A. My duties as manager of the Car Service Association were to supervise and further the prompt handling of the freight from and into cars.

Q. State to the court as briefly as you can, what you know
116 of this controversy, and its origin, between the Greensboro Ice & Coal Company and the Southern railway, and the corporation commission of the State of North Carolina, with reference to the four cars of coal which are the subject of this bill.

A. On or about October 29th, 1903, I had advise that complaint had been lodged with the corporation commission by the Greensboro Ice and Coal Company, to the effect that the Southern railway had declined to deliver carloads of freight consigned to the ice & coal company upon a specially constructed chute on the private property of the Greensboro Ice & Coal Company. I understood that this complaint to the commission was by letter, dated Oct. 20th 1903; that on or about Oct. 26th 1903, during my absence from my office, a telephone message was received from the clerk of the corporation commission, and my office advised him that I was out of town. The subject matter of the communication from the Greensboro Ice & Coal Company was referred, I think, to Col. A. B. Andrews on October 26th. On my return to my office in Raleigh on the morning of Oct. 29th, I learned that inquiry had been made for me. I immediately called at the office of the corporation commission, and found that this letter from the Greensboro Ice & Coal Company was the matter about which the corporation commission desired to see me. Learning that the matter had been referred to the first vice president of the Southern railway during my absence, I discussed the question informally with the commissioners. At the same time I advised him that in as much as I understood that the contents of the letter of the Greensboro Ice & Coal Company had been referred to the general manager of the Southern railway in Washington, I would have to receive instructions from him before proceeding with the case. I told the commission that. The instructions necessary for me to proceed before the commission from the railroad to discuss the matter with them, were not received by me until the morning of Oct. 31st and, while preparing to take the matter up further with the commission, I found that a peremptory order had been served upon the first vice president of the

Southern railway Saturday morning, directing that the four cars of coal be placed in the private yard of the ice & coal company within forty-eight hours from 12 noon of Oct. 31st or the date of that order. Upon receiving this advice I took no further action in the premises.

117 Q. Did you ever see any formal complaint, with the various paragraphs and allegations as required by the rules of practice promulgated by the North Carolina corporation commission.

A. I did not.

—. And was there any such complaint filed prior to this?

A. I did not see such a complaint, nor have I any knowledge of the filing of same.

Q. Up to the time of the making of this order, Oct. 31st, was there to your knowledge any appearing of witnesses or taking of testimony at all before the corporation commission?

A. No sir.

Q. What is the object of the Car Service Association, generally?

A. I possibly might best answer that question by reading from the rules of the North Carolina Car Service Association.

Mr. JUSTICE: Subject to objection, I will let him proceed with that. I think it will not be competent. Witness reads from the articles of agreement of the association as follows:

"The object of this association is to secure the prompt loading, and unloading of cars, and to that end to enforce a legal, reasonable and uniform charge for detention of cars when the cars are detained over the free time prescribed in the agreement and rules."

Q. Has the association succeeded, by virtue of its rules practiced in North Carolina, in facilitating the equalization of equipment over the various railroads in the country, and in the expeditious handling of freight for the benefit of the public?

A. Unquestionably.

Objected to by defendant, as argumentative.

Q. What has been the effect of the rules and regulations of the North Carolina Car Service Association?

Defendant objected, as not pertinent and immaterial.

A. I would say that the inauguration and operation of these rules in North Carolina have been of mutual benefit to the public as well as to the carriers. As an illustration of the benefits resulting from the operation of these rules, I would call attention to the fact

118 that from freight statistics, the average detention of freight cars prior to the operation of the car service rules was nearly five days per car, held this length of time by shippers and receivers of freight. At the present time, the average detention is about 1-1/5 days per car.

Q. Does this tend to insure to the public a better supply of cars for their general use?

A. It has undoubtedly increased the number of cars available for purposes of transportation.

Q. Is this a correct copy of the rules of the Car Service Association of North Carolina? (Shows witness book of rules.)
A. Yes sir.

Complainant offered in evidence book of rules of the North Carolina Car Service Association, marked Exhibit "A."
Defendant objected on the ground of irrelevancy.

Q. Will you call the attention of the court by reading the same, to sections one and two of rule 2 of said North Carolina Car Service Association?

A. Section one of rule 2, reads as follows: "On all commodities for unloading or loading, forty-eight (48) hours (two days) free time will be allowed, except that, sec. 2. Seventy-two (72) hours will be allowed for unloading fertilizers, brick, and the following commodities, when in *bulk* only; cotton seed, cotton seed hulls coal, coke, fertilizing material, grain, lime, tan bark and dressed lumber in box cars."

Q. Will you be kind enough to read section 2, of rule 11?
A. Section 2, of rule 11 reads "in case consignees or consignors refuse to pay or unnecessarily defer settlement of bills for car service charges the railroads shall, upon notice to that effect from the manager, refuse to switch any cars for such consignees or consignors until such charges are paid."

—. I understood you to say that for a period of four years you have been manager of the car service association for North Carolina. What previous experience have you ever had in this line, with reference to car service.

A. My experience in the car service is for nearly six years.
119 Prior to that time, my railroad work was of a varied nature principally for nearly ten years, as general clerk to the general manager of the Cape Fear & Yadkin Valley railroad. During the period of my employment with the C. F. & Y. V. R. R., there were no car service rules in North Carolina.

Q. What is your present position?
—. I am at present connected with the transportation department of the Atlantic Coast Line railroad.

Q. What is your opinion of the reasonableness of these car service rules which have been introduced in evidence and the sections thereof which have been brought to the attention of the court?

Defendant objected.

A. My opinion is that these rules were from my experience, reasonable and necessary for the proper conduct of the business of the railroads.

Q. Do you regard them as operating reasonably, in reference to the public?

Defendant objected.

A. I do, and absolutely necessary to the conduct of the busines

both on the part of the shipping public and the railroads. Without them a condition of affairs would result disastrous to commercial interests.

Q. Will you be kind enough to explain what notices were given to the Greensboro Ice & Coal Company, of the application of section 2 of rule 11, which provides that "in case consignees or consignors refuse to pay or unnecessarily defer settlement of bills for car service charges, the railroads shall, upon notice to that effect from the manager, refuse to switch any cars for such consignees or consignors until such charges are paid."

A. I personally advised M. W. Thompson, on October 9th, 1903, in an interview with him, what action would be taken. Mr. Thompson is manager of the Greensboro Ice and Coal Company. I informed him what action would be taken in the event the
120 charges which had properly accrued were not paid. Subsequently, on Oct. 12, a written notice was served by the agent of the Southern railway at Greensboro, on the Greensboro Ice & Coal Company. What was admitted to be an accurate copy of original notice read in evidence by Mr. Albright as follows:

"Southern Railway.
Office of

GREENSBORO, N. C., *Oct.* 12, 1903.

Greensboro Ice & Coal Company, Mr. M. W. Thompson, manager.

DEAR SIR: Please take notice that commencing 12:00 noon Oct. 17th, 1903, this company will decline to switch any cars to your private siding in the yards of your company at Greensboro, N. C. and will only make delivery to you on the public team tracks of this company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations declining to pay reasonable charges for the use of cars that have been detained before unloading on your private track above referred to and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control.

(Signed) W. E. COFFIN,
Agent, Southern Railway Co."

Q. Did the Greensboro Ice & Coal Company know the terms of the car service rules of the North Carolina Car Service Association, and were they not fully aware of all the provisions of said rules?

A. I think so. The rules were generally known to all shippers and receivers of freight. They have been in effect for years, and have been published.

Q. Did you call the attention of any of the officers of the Greensboro Ice & Coal Company to the terms of these rules, and these particular provisions?

A. In a general way, I discussed the rules with Mr. Thompson in person, on Oct. 9th, 1903.

Q. Did not the Greensboro Ice & Coal Company conduct its business for a number of years with a knowledge of these rules?

A. I think so, sir.

Q. Do you know when the Greensboro Ice & Coal Company ordered the four cars of coal which are the subject of this suit, from the mines in the various States from which they were shipped?

A. I do not.

Q. Do you know whether it was before or after the issuance of this notice of October 12th.

121 A. I do not. I would like to add to that that the way bills indicate that several of the cars were forwarded from the mines after the notice that such cars were only to be delivered on the city team tracks.

Q. Will you explain to the court what breach of the rules was made by the Greensboro Ice & Coal Co. which caused you to instruct that section 2 of rule 11 should be applied?

A. My own knowledge of the breach of the rules was gathered from the fact that the Greensboro Ice & Coal Company peremptorily refused to pay proper car service charges that had accrued on account of their failure to unload coal and wood.

Q. Do you know anything about these cars not being placed, or the merits of the dispute between the Greensboro Ice & Coal Co. and the Southern railway, as to the placing of the cars and the accruing of demurrage on the 14 cars before the four cars, which were the subject of this controversy?

A. My opinion upon which I base that conclusion, was based on the findings of fact by investigation.

Q. These things had already transpired before?

A. Yes sir.

Defendant objected.

Q. Would it have been possible for the Greensboro Ice & Coal Company to have countermanded its orders for these four cars of coal, subject to the notice of Oct. 12, so as to prevent their arrival here after that time?

A. As an ordinary business transaction, I would think so, sir.

Q. Did you ever have any talk with Mr. Thompson with reference to this matter, in reference to the application of sec. 2, of rule 11?

A. I do not recall whether I read the rule to Mr. Thompson or not, but I discussed the general manner with him, on Oct. 9th, 1903.

Q. Is there anything further you would like to state?

A. Nothing that occurs to me at this time.

Letter from Mr. M. W. Thompson to Col. A. B. Andrews, dated October 21, 1903, offered in evidence by complainant, marked Exhibit "B."

Letter read in evidence as follows:

122 "GREENSBORO, N. C., *October* 21, 1903.

"Col. A. B. Andrews, Raleigh, N. C.

DEAR SIR: I enclose you a copy of a notice served upon this company by the agent of the Southern railway at this point, trusting that you will afford us immediate relief from the same, and desiring an expression from you as to the justice of the claim they make upon us, and your sympathy with the means taken for its collection.

The facts are these: We have been endeavoring for the past two years to secure the erection of a coal trestle on land entirely outside of any right of way claims, but until recently we were unable to do this by reason of the conditions the R. R. desired to impose. A short time ago the permission was granted to elevate the track we had been using to handle our coal. Work was commenced immediately, as we wished to lay in our stock of winter coal, the tracks were torn up under R. R. instruction, we did all the necessary grading, built the trestle at our own expense, the R. R. replacing the rails.

It was impossible for us to unload the coal that came in during the erection of the trestle, as our tracks were torn up and our bins torn out, so these and our wood cars were held on R. R. sidings and not placed — our track as stated in Mr. Collin's notice, and we agreed to unload the wood cars if they would place them on a public siding near our plant that other parties were using.

Upon completion of our trestle I was surprised to have presented a bill for $124.00 demurrage, and given to understand that I should have to pay the same or means would be taken to enforce its collection. Now, as to the injustice of this demand, the R. R. Co. so far admit this as to state that they would remit half of the amount, but that I must pay the balance and served me with the inclosed notice.

Those familiar with the facts view this as an extreme use of force methods, and lack of intention to deal justly with
123 patrons, inasmuch as we pay out $15000 a year in freights, given the R. R. no previous trouble, and entered no suits for delay of cars or other reasons, so their is nothing lack of this claim, that would warrant the resort to the present strong method.

Should there be no relief from the present means, it means that we shall ultimately quit business or pay the claim, as we handle some 200 cars a year, and use when running the plant a car and a half of wood a day, so that you see this is impracticable, and would mean each year an enormous expense for hauling each year.

Had this claim been incurred through neglect on our part, instead of inability, caused by the removal of tracks, and in accord with R. R. orders, we should have paid the claim, notwithstanding the fact that the trestle is worth as much to the R. R. as to ourselves, as your officials have so stated, we can handle twice as many cars as formerly and more rapidly, and the car service association will gain in a short time the amount accruing during erection of the trestle, by the rapidity by which the cars can be returned to them under

present conditions over the slower method of shoveling formerly used.

I wrote Mr. Coffin that we considered the claim unjust but were willing to pay the same if he would give the same consideration to a claim of our own, and filed with him a bill for some $1600 for penalty on delayed cars, and refusal to pay for coal confiscated last spring. I told him it was not our intention to push these claims unless they continued to use arbitrary methods with ourselves, and that we should apply to the corporation commission for relief.

Since the inclosed order has gone into effect, four cars have come on the yard, these have been marked up to the team track according to order, they have refused to turn the same over to us and make delivery on our trestle as instructed. We have refused to accept these cars unless placed as per our instructions, and also to pay freight for same unless assurance is given that these cars will be placed as instructed.

124 We desire immediate delivery of these cars, and are in need of same, and it has been suggested that I lay the matter before you, which I have done and trust that you will give this matter fair consideration and act accordingly, I am sir

Very truly yours,

(Signed) M. W. THOMPSON."

The complainant, reserving the right to reintroduce this witness for other matters should it become necessary, turned him over for cross-examination.

Cross-examined by Mr. JUSTICE:

Q. What day did you first hear of any misunderstanding between the Southern railway and the Greensboro Ice and Coal Co. as to placing cars consigned to the Greensboro Ice & Coal Co., any dispute at all about the placing of those cars?

A. I never heard of any dispute in placing the sirst lot of cars.

Q. When did you first hear of any difference between the Greensboro Ice & Coal Co. and the Southern railway, in respect to any matters concerning those cars?

A. I think, sir, on October 1st, 1903.

Q. What was the condition, if you know, of the siding which leads to the premises of the Greensboro Ice & Coal Co. at that time?

A. I think on Oct. 1st the side track was in shape for the movement of cars over it.

Q. Have you been there and seen that siding?

A. I have.

Q. It is entirely feasible to place cars upon it, is it not?

A. I should judge so, at present.

Q. It is not now in the same condition it was in on Oct. 1st?

A. I did not see the track in person until Oct. 9th.

Q. When you did see it, it was in good condition?

A. In use, yes sir.

Q. In safe condition to use, so far as appeared to you?
A. I made no examination as to its physical condition.
Q. From the inspection that you did give it, casual or otherwise, you saw nothing to indicate it was not entirely safe?
A. I formed no opinion on that line, only I noticed the cars were moving over that track.
Q. Is your knowledge of that trestle such that you can now give an opinion as to whether it can be used with safety now?
A. My experience is railway service has not been in the roadway or mechanical department. I judge generally speaking from a business standpoint. I can form an opinion by reason of my contract with matters of that sort every day.
Q. Give us the benefit of any opinion you may have.
A. I never critically examined the trestle with that idea in view, consequently I hardly think that I should volunteer an opinion on that line, as to its safety.
Q. How many times have you seen it?
A. Three times.
Q. You saw nothing which justified you in criticising the trestle?
A. No sir.
Q. And so far as you are concerned, your failure to place those cars or to order them placed, and whatever else you may have done in this matter, was not at all influenced by reason of the physical condition of that side track and trestle?
A. No sir.
Q. Do you know how long the trestle was being constructed?
A. I do not.
Q. Is it not a fact that we can class these cars in two classes, one s the first lost consisting of fourteen in number, and one class, the econd lot, consisting of four in number, the second class being the ubject of this order of the corporation commission.
A. I think it would be proper to so classify them for the reason of aking them clearly understood.
Q. So classifying them, I will ask you if it is not a fact that the rst lot of cars arrived at Greensboro, as you understand it, while the estle was being built and tracked up in its present conditions?
A. Yes.
Q. Is it not also a fact that it is not in dispute that but one of those cars was unloaded while the trestle was being built?
A. I do not recall that at this time. I have no recollection as to y cars being unloaded during that period or any evidence of it. may be mistaken.
Q. The $146.00 which was claimed by the railroad company to be e on this first lot of cars accrued during the period that the trestle s being constructed, and the track placed, did it not?
A. Yes sir.
Q. When these four cars arrived, if you had seen proper, or the lroad Co. had seen proper, to waive any claims or demand for

that $146.00, there would have been no dispute at all about those four cars, so far as you know, the second class, dispute between you and the Greensboro Ice & Coal Company, as to placing them, and as to demurrage and freight charge?

A. Had the Greensboro Ice and Coal Co. complied with the regulations, there would have been no question, I take it, in regard to the final delivery of these four cars.

Q. When you say the *the* Greensboro Ice & Coal Co had complied with car service regulations there would have been no dispute in respect to these four cars, you mean if they had paid this $146.00, as you claim they should have paid, there would have been no dispute?

A. That is correct.

Q. So that the entire controversy accrued out of the railway company on the one hand, asserting that the ice & coal company was liable for $146.00 demurrage claim on the first class of cars, and the ice and coal Co. denying their liability. Is that a fact?

A. On account of the ice & coal Co. refusing to pay charges on cars that they had detained during the construction of the special arrangement in their private yard.

Q. The Greensboro Ice & Coal Co., you say, did not file a complaint, numbered as required by the rules of the corporation
127 commission, but they did file a paper writing, in which complaint against the Southern railway was made, did they not?

A. I did not understand there was anything filed, merely a communication from the Greensboro Ice & Coal Co. to the commission.

Q. You saw that did you?

A. I saw it, yes sir.

Q. Let me read this to you and ask you if this is what you saw?

"GREENSBORO, N. C., *Oct.* 20, 1903.

"Hon. Franklin McNeill, chrmn. corporation commission, Raleigh, N. C.

SIR: I enclose you a copy of a notice recently served upon me by the agent of the Southern railway at this point, and I desire to present the facts to you trusting that you can afford us the necessary relief. We have been endeavoring for the past two years to secure the erection of a trestle to facilitate handling the quantity of coal we use, but we were unable to do this until just recently when permission was granted to elevate the track we had been using for unloading our cars. The rails were removed under railroad instruction, we built the trestle at our own expense, and did the necessary grading ourselves, the R. R. Co. replacing the rails.

I proceeded with the erection of the trestle immediately upon receipt of permission as the cool weather was coming on and we wished to get in our stock of coal, and coal that was on the road and coming on standing order it was impossible for us to handle as the

track had been torn up, and it was held on R. R. sidings and not placed on our track as stated in letter.

Upon completion of the trestle, I was surprised to have presented a bill for $124.00 for demurrage on cars that had never been placed, and I was given to understand that I should have to pay the same or means would be taken to enforce a settlement, notwithstanding the fact that we agreed to unload some of these cars if they would
128 place them on a siding near the plant that was being used by other parties and was a public team track which they did not do.

As to the injustice of their demand, they so far admit this as to state they will remit half of the demurrage but that I must pay the balance and serve- me with the inclosed notice.

Should there be no relief from this force method, it means that we shall have to go out of business or pay their claim, as we handle some 200 cars a year, and when running the plant it takes over a carload of wood a day, so that you see this is impracticable, and would mean our maintaining a regular hauling force at over a thousand dollars a year. Viewing the proposition in another light, that had we run up this bill through neglect instead of inability for which the R. R. was responsible as the tracks were torn up by their instructions, they should still have shown a sufficient amount of liberality to have withheld any such claim, as one of the officials here stated that he considered the trestle worth more to the R. R. than to this company, as we can handle twice the number of cars at a time, and the car service association will gain in a short — the amount lost on their cars, by the rapidity with which they can be returned to them.

Those familiar with the facts view this as an outrage inasmuch as we have been giving them about $15000.00 a year in freights, giving them no previous trouble, entering no suits for delay of cars, so there is nothing back of the claim, and I trust that you may see this in the same light. I would state that similar action has been taken with other parties for an amount of $2 claimed from last spring.

Since the enclosed order has gone into effect, there have been four cars come on the yard, which have been marked up for the team track according to order, and they have refused to turn the same over to us and make delivery on our trestle as instructed. We
129 have refused to accept the cars unless placed as per our instructions, and also to pay freight for same unless assurance is given that these cars will be placed as instructed. We desire immediate delivery of these cars, and are in need of same, and I trust that you will use all means in your power to effect these, and write me instructing us as to our position in the matter. I am,

Very truly yours,
(Signed) M. W. THOMPSON."

Is that the communication that you saw?

A. I did not see that letter in the office of the commission, but saw a copy of it in the evidence afterwards.

—. This letter was the communication on file when you first were at the corporation commission office, was it not?

A. I think so, sir, but I understood it to be simply a communication asking for advice.

Q. Upon that communication or paper, the corporation commission proceeded to order the placing of those four cars, did they not?

A. Yes sir. I think so.

Q. Before the order of the corporation commission requiring the placing of those four cars was effected, the Greensboro Ice & Coal Co. was directed to pay the freight charges on those four cars, was it not?

A. I think the evidence shows it.

Q. There was no demurrage claim on those four cars, was there, at the time of this order?

A. I think there was.

Q. On those four cars?

A. Yes sir.

Q. When did this demurrage on those four cars, the subject of this order, accrue, prior to the making of the order?

A. The order bore date Oct. 31, 1903. The cars were on demurrage there about October 22 to 25. I have no calendar I cannot tell. Sunday is the legal holiday. However charges were accruing on those four cars after Oct. 25 or 26.

Q. So the claim for demurrage on these four cars was between the period that Mr. Thompson filed the complaint asking you to place them on the side track, and the period that you were ordered
130 to place them there, was it not?

A. Two of the four cars, Norfolk & Western, 12,565 and Southern 70,734, were on demurrage following seven o'clock a. m. October 23rd: one, Chesapeake & Ohio, 17,895, following seven a. m. October 24th: and one, Norfolk & Western, 23,283, following seven a. m. October 27th.

Q. You claim that after those days these cars were subject to demurrage?

A. That is correct.

Q. Why do you make that contention?

A. For the reasons that the consignee had made no effort to unload them, notwithstanding that they were placed accessible for unloading, as required by the rules of the corporation commission.

Q. Where were they placed accessible?

A. On the team track.

Q. As required by the rules of the corporation commission?

A. I do not understand that the corporation commission rules require delivery at any particular point, but that they should be accessible.

Q. As you understand, they are required by the rules of the corporation commission?

A. That is correct.

Q. Prior to the date that you say the demurrage began to accrue, to-wit: October 20th, 1903, Mr. Thompson made his complaint to

the corporation commission that the railroad company would not place these cars on his private siding, which under the circumstances, was the accessible point as he contended?

A. I would not say, under the circumstances, that that was the accessible point. My understanding was that in a letter addressed to the corporation commission he mentioned those facts.

Q. As you did not agree with him in his contention, you refused to place those cars on this private siding?

A. The order signed by agent at Greensboro, dated Oct. 12th, 1903, was still in effect at the time, Mr. Thompson, not having complied with the rules governing the cars' detention.

Q. In other words, Mr. Thompson, not having paid this $146.00 on account of the first lot of cars, that is what you mean by
131 not having complied with the rules?

A. And further, Mr. Thompson's unwillingness to recognize that there was any charge due the railroad by him, notwithstanding in a letter to both the commission and to Col. Andrews, he made the statement that the cars were detained due to the fact that it was impossible to unload them.

Q. The letters to which you refer have both been read in evidence heretofore?

A. Yes.

Q. It was because Mr. Thompson would not pay that $146.00 that you would not place those cars on that private siding—is not that true?

A. Mr. Thompson's refusal to pay these charges made it necessary for the railroad *to* company to hold its equipment at a point on their tracks where they could see to it that the cars were unloaded properly or the charges paid.

Q. You have just said that it was not — account of apprehension that he would not unload the cars properly, or for any other reason, that you did not place those cars on that private siding, but the issue between you and the ice company was the payment of the $146.00 on account of the first lot of cars—is that not true?

Question objected to on the ground that the complainant does not regard the previous testimony of the witness to that fact.

A. I might say it was contingent upon the payment of that amount, which would have given us evidence of good faith on the part of the Greensboro Ice & Coal Company that the regulations in the future would be fully complied with..

Q. In order to make it clear, if the $146.00 had been paid, on October 20th, 1903, the four cars, subject of this order, would have been placed on this private siding of the Greensboro Ice & Coal Company, would they not?

A. Upon payment of that $146.00, and a guarantee on their part of a future compliance with the car service regulations, switching would have been resumed.

132 Q. The demurrage which you say accrued on the four cars which were the subject of this order, accrued after you refused

to place them on the side track of the Greensboro Ice & Coal Company, is that not true?

A. If you will permit me, I would like to refer to a memorandum for some data—I might be better able to answer your question.

(Witness refreshes his mind from memorandum.)

Q. Was the order general?

A. That no cars would be placed after October 17th.

Q. Is not that the day that that went into effect?

A. The order signed by the agent at Greensboro went into effect October 17th.

Q. If that went into effect Oct. 17, from that date you refused to place cars on this private siding, that is true is it not?

A. Pending the settlement of this dispute.

Q. Therefore, any demurrage that accrued on those four cars, subject to this order, must have been after your refusal to place the cars on the siding, after the embargo went into effect?

A. That is true.

Q. The ice & coal company refused to receive those four cars on the public team tracks?

A. My first knowledge of the demand on the part of the ice & coal company, in writing to place the cars upon their side track, bears date October 27th.

Q. When did you first visit the corporation commission?

A. October 29th.

Q. You then found that their complaint had been made October 20th?

A. I am not sure of the date of their letter.

Q. It was exhibited here in your testimony in chief?

A. If I stated October 20th, it was simply by reason of hearing the date repeated here, not of my own knowledge. I presume it is dated October 20th.

133 Q. I have asked you a great many questions, all with a view to elicit this information: If you had not refused for any reason to place these four cars on this private siding there would have been no demurrage on these four cars?

A. I could not say that. I hardly think it would be proper for me to make an assertion of that nature.

Q. If you had placed those four cars on that private siding, and they had been unloaded in due course of business, there would have been no demurrage on the four cars.

A. If the cars had been ordered promptly after notice.

Objected to as a mere matter of opinion and pure conjecture.

Q. The corporation commission passed on this dispute between the Southern Railway and the Greensboro Ice & Coal Company?

Objected to by complainant as a matter of law.

Q. You have said in one of your letters to Mr. Thompson that the corporation commission was fair, and you also said a while ago in your testimony that the rules of the corporation commission, as you

construed them, did not require you to place those four cars on this private siding, did you not?

Objected to as the opinion of the witness as to the corporation commission is not competent.

A. I think my statement was to this effect: That the rules of the corporation commission only required railroads to place cars at accessible points for unloading, and it did not designate a private track as the accessible point.

Q. According to your construction and under-standing, to whom is the question of what is the accessible track referred?

A. I think that is best determined from practice.

Q. By whom?

A. By both the shipping public and the railroads.

Q. In case of a difference between the custom of the railroad and the railroad, who do you contend is to settle that difference?

Objected to as purely a legal proposition.

A. We have no referee in such cases. The usual practice is, that when it becomes a question between the railroad and the pub-
134 lic, generally a law suit results.

Q. Then you do not admit that the corporation commission is the proper tribunal to settle it?

A. We understand that in many cases of this sort, it is a fact that questions arising under such conditions as you mentioned, are referred to the corporation commission by the complainant, but not by the railroads.

Q. You and the Greensboro Ice & Coal Co. then disagree as to this spur track or siding being an accessible place for unloading those cars?

A. I did not say that, Mr. Justice.

Q. Do you and they disagree about its being the most convenient place for unloading those cars?

A. The consignees, the ice & coal company might contend that, but the railroad would have a perfect right to state that some other point would be more accessible to them.

(Question read over to witness.)

A. That is the point that involves the whole controversy, as I understand. I would say from the railroad's standpoint that the most accessible point for the delivery of those cars was upon the public team tracks, alongside of the railroad, the nearest point, after the arrival of the cars. To deliver those cars on the private side track of the Greensboro Ice & Coal Co. would entail expensive switching in order to reach those tracks, after the coal cars arrived on the main line of the railroad company.

Q. Do you know the conditions in the freight yard of the Southern Railway at Greensboro, in Oct. 1903.

A. In a general way, yes.

Q. What was it, whether it was congested or not?

A. I do not think there was any serious congestion of freight.

Q. Had there at any time within a few months previous to that date, been any congested condition. This condition very frequently occurs, not only at Greensboro but elsewhere.

Objected to by complainant.

(Question read over to witness.)

135 A. I think that is fair, because I have no data in mind to answer your question.

Q. Can you tell me whether in the summer or fall of 1903, the Southern Ry. yard at the town of Greensboro was congested on account of the large amount of freight shipped to that point.

Objected to as not bearing upon its condition at the time of the inquiry now before the court.

A. Of my own knowledge, I do not think it would be proper for me to answer that question, because my visits to Greensboro being infrequent during that period the transportation officer of the line could better answer that question.

Q. You found no trouble in telling us about the condition of these four cars at a time you were not in Greensboro and your information depended upon an investigation which you made subsequently?

Objected to by complainant.

—. Now do you not think you could with equal propriety answer the question I have asked you about the congested condition of that yard.

A. I think I have made a reference to the fact that these four cars on one occasion and the thirteen or fourteen cars on another occasion contributed largely to the congestion of the yards at Greensboro.

Q. Did you see them?

A. I am only speaking in a general way.

Q. Will you in a general way answer my other question.

A. I have endeavored to do so. You said during the summer and fall of 1903. In regard to the other congestion I was speaking, during the period that those particular cars were there, if there was a congestion and they contributed very largely to it.

Q. If there was congestion these cars contributed largely to it you say, was there a congestion?

A. I think that I may answer your question by saying that after these cars were held, that arrived about the 18th to 22nd of October, as long as ten days on this team track, and not having been unloaded by the ice & coal company, it became necessary, in order to

136 place other freight that other consignees desired to unload, to switch these cars to the ice & coal company's track, team track, to another portion of the outlying yard; and that might be termed a congestion.

Q. Do you mean now, here in the good city of Greensboro, to tell this court that the cause of the congestion, whatever it was, on the freight yard of this railroad company in the summer and fall of 1903, — and due to these cars consigned to the Greensboro Ice & Coal Company?

A. I did not say that.

Q. Don't you know as well as you know that these cars contributed to any congestion, or that there was congestion while these cars were there, that before they arrived and after they arrived, there was a seriously congested condition on that yard?

A. It would be difficult for me to get data along that line that would enable me to make a comprehensive reply to your question.

Q. If there was congested condition by reason of the number of freight cars shipped to Greensboro, would it not have been relieved to some extent by using this private siding of the ice & coal company for the purpose of placing the coal company's cars on the siding? Answer this yes or no, please?

A. I will say yes.

Q. Is it not the custom of the Southern railway at Greensboro and elsewhere to construct sidings and spur tracks to manufacturing plants, and for business enterprises where a large amount of freight is received?

A. It is the custom to have side tracks constructed for large enterprises but I think as a rule the cost of such constructions is paid by the parties desiring the special tracks.

Q. After the party pays the cost and the siding is constructed, then is not it a custom of the railroad company to place freight consigned to such person or enterprise upon its sidings upon re-

137 quest?

A. It is, so long as the regulations in regard to that side track are carried out.

Q. About how many such sidings are there at Greensboro?

A. I don't know.

Q. You know there are a very considerable number?

A. Yes sir.

Q. If the use of these private sidings was abandoned, would it not result in a congested condition of the team tracks and freight yards of the railroad company?

Objected to as speculative.

A. If it was necessary to any side track, to close them up, and make all switching upon the yard of the railroad, I imagine the railroad would construct yards sufficient to handle it.

Q. I ask you if you abandon the private side tracks, if it would not result in a congested condition of the freight yards of the Southern railway, and you undertake to answer that by telling me what you imagine the Southern railway would do?

A. I think I answered your question in exactly the same spirit in which you asked it.

Complainant also objects to counsel requiring complainant's witness to answer yes or no.

The MASTER: You will respond to the question in your own language. You are not required to answer yes or no.

Q. If the use of these private sidings was abandoned, would it not result in a congested condition of the team tracks and freight yard of the railway company?

A. I will answer no, for the reason that if it was necessary to abandon the private side track, there would be no business to congest the yard. It would indicate that there was no business to congest the team tracks.

Q. With all deference to you, it appears to me to be a play on words, and I want to ask you the question so that you will understand it. I ask you please to respond to it. If the Southern railway should abandon all private sidings in Greensboro, for the
138 same reason and in the same way that they abandoned the private siding of the ice & coal company, would not it in your opinion necessarily result in a congested condition of the freight yard?

A. I understand you to mean by that the possibility of offering delivery upon the public team tracks. I will say yes.

Q. These coal cars have an arrangement by which they can be unloaded from the bottom by just dropping the bottom?

A. A great many of them have what is known as the hopper bottom. The coal is dropped through the bottom. A number of cars are known as flat cars and the coal is shoveled over the ends of the cars.

Q. Can these hopper bottom cars be unloaded with greater facility on the trestle constructed by the Greensboro Ice & Coal Company than they can from the public team tracks?

A. Yes.

Q. How far is it from the plant of the Greensboro Ice & Coal Company to the point on the public team track where you understood these four cars were offered for delivery?

A. I would say about one hundred and fifty yards.

Q. Across two streets is it not?

A. It would be out the roadway leading from the ice & coal company to South Elm and down South Elm to the team track.

Q. Would not you cross Davis street?

A. That would depend on the location of the car. There is a team track that runs up to South Elm street known as Eating House track, and there is another track near the freight station on the other side. To unload from that it would necessitate going down Davis St. That would be crossing two streets.

Q. How would they unload those cars from this public team track —describe the process.

139 A. Either by throwing it from the top of the car over the side into wagons, or opening the hopper at the bottom of the car, and shoveling it from underneath. Both methods are used.

Q. In case it is dropped through the hopper car, the coal would have to be shoveled from the track before that portion of the track could be used.

A. Yes sir.

Q. About how long would it take a wagon, say with three hands, to unload an ordinary car of coal by that method and haul it 150 yards?

A. I would think that it could be done in a day or a day and a half.

Q. Assuming that the car stood on a public team track, at the place where you understood that the railroad company offered it to be unloaded, how long would it take to remove it from there to the Greensboro Ice & Coal Company's private siding, and drop the bottom out and unload the car in this way?

A. I should think it could be done in an hour.

Q. If there were offered to the Greensboro Ice and Coal Company on the public team track as many as five cars of coal at one time to be unloaded, could they unload them by having a wagon with two men and shovels in time to avoid incurring demurrage?

A. I would say not.

Q. On that private siding, I ask you if they all could not be unloaded within two hours?

A. I cannot answer that question for the reason that I have no knowledge of the length of the track in the yard.

—. If it is three hundred feet long?

A. It would certainly accommodate four cars easily, and more.

Q. Then they could be unloaded in two hours?

A. After placing, yes sir.

Q. Counting the time to place them, could not it all be done in two hours?

A. It could be done, yes sir.

Q. I ask you, if on October 30th, 1903, the day before the order of the corporation commission, to place those four cars was made, if you did not indicate to Mr. Thompson you, determination not to place any more cars on his siding unless this $146.00 was paid.

A. I do not recall just what I said to Mr. Thompson.

110 Q. Was not it your purpose on the day before this order was made and on the day that the order was made, not to place any more cars on that siding unless he paid this $146.00?

A. The notice to the Greensboro Ice & Coal Company issued by the agent at Greensboro, according to my instructions, was still in full force and effect on that date.

Q. That is no response. All I want to know is, whether on that day, the very day, you did not have the present purpose not to place those cars unless he paid the $146.00?

A. It was our purpose on that day, as on all days prior to that, to discontinue service on that track until the rules were complied with.

(Counsel hands paper writing to witness to refresh his memory with.)

Q. Did you not on October 30th state to Mr. Thompson in a letter that you had been before the commission on that day and the day previous, and that you felt that you could maintain at law your position, that Mr. Thompson was wrong in refusing to acknowledge the detention charges on the fourteen cars, the first lot, and to pay the same?

A. Yes sir.

Q. When was it that you understood that Col. Andrews had notice of the complaint before the corporation commission of the railroads not placing those four cars as requested by Mr. Thompson.

A. Sometime between October 26th and 29th. I was not in Raleigh and received a communication from them during that period.

It is admitted that Col. A. B. Andrews is the first vice-president of the Southern railroad and that he is the general executive officer in this State.

Redirect:

Q. What was the main object of the car service association? and yourself as manager, insisting upon the rules being conformed to by the Greensboro Ice & Coal Company in regard to the $146.00 or $124.00?

141 Objected to as immaterial.

A. The charges being due for car detention by the Greensboro Ice & Coal Company, I insisted upon the payment of the same as being incident to the conduct of our business. That without the application and collection of these charges we could not maintain our regulations up to the efficiency desired.

Q. Were you particularly anxious to get the money or to enforce the rules?

Objected to.

A. To enforce the rules.

Q. These North Carolina car service rules are adopted by the various railroads of the State are they not?

A. They are adopted by the railroads generally throughout the State.

Same objection by defendant.

Q. These are not the same rules in every respect as the rules promulgated by the North Carolina corporation commission, are they, in every particular?

A. Not in every particular.

Q. Is it the position of the North Carolina car service association that these rules apply to inter-state commerce?

Objected to by defendant.

A. The position of the car service association is that the car service rules apply to everything intra as well as interstate.

Q. If there anything in your opinion in those rules which conflicts with the rules of the North Carolina corporation commission?

Objected to by defendant.

A. Not to my knowledge.

Stand aside.

142 H. W. MILLER, witness in behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. NORFLEET:

Complainant here offered in evidence letter from H. C. Brown, clerk of the corporation commission to Col. A. B. Andrews, first vice-president of the Southern railway, dated Oct. 26, 1903, enclosing copy of letter of same date to Mr. M. W. Thompson, manager, Greensboro Ice & Coal Company, from H. C. Brown, clerk, corporation commission, marked Exhibit "C."

Also order of the North Carolina corporation commission, bearing date October 31, 1903, marked Exhibit "D."

Q. State your name and position?

A. Henry W. Miller, assistant to first vicespresident of the Southern railway.

Q. The first vice-president is Col. A. B. Andrews?

A. Yes sir.

Q. Can you state of your own knowledge when those letters and that order were served on Col. Andrews?

A. The letter of October 26th was sent through the mail to Col. Andrews received in the mail. I know that of my own knowledge. The order of October 31st was served personally by the clerk of the corporation commission on Col. Andrews.

Q. Do you attend to a large part of the business that comes under the authority of Col. Andrews?

A. I attend to probably three fifths of the correspondence, or I might go up to four fifths.

Q. How about matters before the corporation commission?

A. I have been looking after that possibly more than any other person, incidental matters.

Q. Would it come within the scope of your duties to appear before that commission in response to such a communication as this, in a preliminary way?

A. No, I think not, unless the transportation department should request it. It is a matter that would come directly under that department, and would be one that our office would not be advised of, as to the details.

143 Q. Did you, or any of your office as far as you know, appear before the commission to test that question which was

made in the letter of the 26th of October, prior to that order of the 31st.

A. I did not, and I have no recollection of anyone from our office appearing.

Q. How long have you been in the railroad business?

A. Since 1885.

Q. Are you familiar with that business, in its various phases, and the value of it?

A. In a general way, I am familiar with the railroad business. Of course there are particular lines in which I am more familiar than with the other lines, but in the office where I am, we of course do not handle the details of operation.

Q. What in your opinion, is the value of the right of the Southern railway to conduct its interstate business at Greensboro, to dispose of its rolling stock and distribute it, and to refuse or permit its cars to be placed upon side tracks at Greensboro and other portions of the State?

Objected to, as being irrelevant, immaterial and in no way arising in this case.

A. I think the value of that right is incalculable. The right of the Southern railway to operate its business without suggestion or orders from individuals, is one that could hardly be valued in dollars and cents, as it goes into such enormous amounts that it reaches hundreds of thousands of dollars. If the company were to release its right to manage its affairs to individuals, or to anyone, it would mean perfect chaos in its operating. I do not think there would be any use to have any officers or operating officers if we were going to turn the road over to the public, and therefore the value of this right could only be gauged by thousands of dollars.

144 Q. Suppose the Greensboro Ice & Coal Company and the corporation commission of North Carolina had the right to order cars taken out of the train at any time, day or night, and put on this private siding of the ice & coal company at the will or whim of that company, or of the corporation commission, what would you estimate to be the value of that right?

Objected to, for the same reason, also because it is speculative.

A. I should think that would be a very great right. It would stop interstate commerce, if you would give the Greensboro Ice & Coal Co. the right to say that we should stop a train just when they saw fit, and take a car out and switch it on to their private siding, it would absolutely hold up the business of the company.

Q. What is the value of that right to the Southern Ry. Co.?

Objected to.

A. That right is valued at its gross earnings, certainly at its net earnings, which are millions of dollars, as Greensboro is on the main line, and to cut off Greensboro would mean to cut off a very large amount of the business that moves. And were you to stop the train

and take an engine and move a car for the ice & coal co. at any time they saw fit, it would mean stopping of almost the entire business, and that would mean thousands of dollars of delay, and loss probably in perishable freight, and thousands of dollars paid in damages. It is a very hard matter to estimate.

Q. What, in your opinion, is the value of the right of the Southern railway to manage, control and govern its business, according to its reasonable rules and regulations at Greensboro?

Objected to, as being in no way involved in this case.

A. I think that the value would be one that would be measured by the earnings of the Greensboro station, which, I presume, ranges from fifty to seventy thousand dollars a month.

145 Cross-examined by Mr. JUSTICE:

Q. I want to ask you if you can see how it would injure the Southern Railway Co. to place four carloads of coal, consigned to the Greensboro Ice & Coal Company, on a siding within 300 feet of the depot, for the purpose of being unloaded, when it could be unloaded there in two hours, instead of placing it on a team track where it would take four days to unload it?

A. That would depend largely upon what was involved in placing the car. If the placing of the car involved the giving up entirely of our right to demand and collect storage, then I say that it would amount to a considerable sum—it would amount to a great deal more than the mere placing of the car, or the facility in which the cars would be unloaded.

Q. Suppose it involved nothing except what my question indicates, then will you please answer it?

A. I could not conceive how it could involve nothing but what your question indicates.

Q. You cannot then conceive of this condition of affairs, the railroad company having a public team track upon which four cars can be unloaded in four days, and there being a private siding upon which four cars can be unloaded in two hours. Can you conceive of that condition of affairs?

A. Oh yes.

Q. Having conceived that, now then can you tell me how the railroad company would be injured by placing the cars on that private siding, for the purpose of unloading, instead of letting them remain on the public team track? Just that and nothing more.

A. In answering that question, you must imagine enough to say what would tend to cause you to refuse to put those cars there, if anything had transpired beforehand, if such had not been the case with the Greensboro Ice & Coal Co., then I should say it would be better to place them.

Q. Then, as to whether there is anything else in it brings up the merits of the cause, the merits of the controversy in respect to the cause of not placing them?

A. That question is too much involved, you had better split it.

146 —. Does not that simply bring up the question as to what the cause of not placing them there was?

A. To some extent, yes.

Q. Is not that all there is left of it?

A. The failure to place those cars was brought — by reason of the Greensboro Ice & Coal Company declining to comply with the reasonable rules.

Q. Do you swear that the failure to place those cars was brought about by reason of the ice & coal Co.'s failure to comply with a reasonable rule?

A. I cannot answer that directly, because I have never handled the matter.

Q. Then the question as to whether the railroad could and ought to have placed those cars depends upon the cause for which they did not place them, does not it? The merits of it.

A. To some extent.

Q. Does not it to all extents?

A. I answered that question, I think.

Q. And then you tell me that the cause was the Greensboro Ice and Coal Co.'s refusing to comply with reasonable rules?

A. I said that would be a precedent upon which they might with reason refuse to switch cars.

Q. Suppose the cause of not placing those cars was that the ice and coal Co. would not pay $146. charges on other cars, not those at all. Then as to whether the railroad was right or wrong, would depend upon whether that $146 was due or not?

A. It might.

Q. Is not that an insufficient answer.

A. It might and it might not. I will answer that by stating that I am not entirely familiar with the car service rules. I have never handled the particular case in question. The only connection that our office has ever had with the details of this transaction, is the notice of Oct. 26, to Col. Andrews, and which was referred to the operating department, and the notice of Oct. 31st., which was also referred to the operating department. The first vice-president's office has never handled any of the details connected with

147 either the original claim in this case or the matters before the corporation commission, in any way, simply as a clearing house, by reason of Co-. Andrews being the officer upon whom process was served.

Q. I understand your testimony in general to be principally as to the value of certain rights of the railroad company, to control its business and its rolling stock?

A. Yes sir.

Q. Now, it is with reference to that testimony that I am trying to cross-examine you. If the Southern Ry. refused to place four cars on the Greensboro Ice & Coal Company's siding, because the ice & coal Co. would not pay the Southern Ry. $146, and it should turn

out that that $146 was not due, then the Southern Ry. would not have been injured and sustained no loss at all by placing those cars, would it?

Question objected to, as being purely metaphysical and argumentive.

A. It depends upon who is the person to settle the question of the cause and the demurrage.

Q. I understand your answer to be in effect that it depends upon whether that demurrage is honestly due?

A. No, upon who is the proper party to settle whether it is due or not.

Q. Could not you answer my question by conceiving that whoever the person to settle it may be, that they have settled it in favor of the ice & coal Co?

A. I do not think it would have injured the railroad *per se* for that particular minute, except in so far as it might — brought about other conditions in connection with car service which might lead up to a great deal worse, or a great deal larger loss than that particular instant.

Q. You do not mean to contend that the Southern Ry. has a valuable right in that it may extort money from people that is not due, do you?

A. I do not contend that the Southern Ry. has ever endeavored to extort money from anybody that was not due.

Q. Without regard to whether they ever have or ever will. Do you contend that the right to do it, if they should want to, is of money value to them?

148 Objected to by complainant.

A. I will answer that just as I have previously done.

Q. I understand your answer, but that is not the question I asked you? The question I have asked you is, do you contend that the Southern railway's right to demand the payment of this $146, without regard to whether it is honestly and properly due or not, is of value to the Southern railway?

Complainant objected, and asked that the witness be not required to answer the question.

A. I will give the same answer. I do not consider a right to extort an illegal charge a valuable right.

Q. But you do consider the right to hold these cars off of the siding of the Greensboro Ice & Coal Co. until $146 which the railroad company claims to be due, is paid a valuable right, do you not?

A. If the $146 is a proper charge under car service rules, of which I have no knowledge one way or the other, as I know nothing about the merits of the controversy, I think it would be perfectly proper for the Southern Ry. to take the position that they would not switch future cars unless the ice & coal Co. conformed to reasonable rules and regulations.

Q. Your answers to the last two questions puts you and me about together. I will ask you if the proper interpretation of the whole matter is not that the right to refuse to place these cars on that siding under the circumstances of this case, depends upon the question as to whether the ice & coal Co. have violated reasonable requirements and rules.

A. It depends altogether upon who is to judge of reasonable rules and regulations. If possibly it was left to somebody that had no interest in the management of railroads, they might not pass the same rules and regulations that an operating man would pass. If those rules and regulations as set out by the railroad company are violated, I think it is perfectly proper to serve notice on the consignee or consignor that they will not switch cars to private sidings until they have complied with such rules.

149 Q. In my question, which assumed that the rules and requirements were reasonable, I intended you to understand that the reasonableness of the rules and requirements should be passed on by some absolutely fair tribunal. I am not undertaking to commit you to any particular tribunal. The question I am asking you, is, assuming that the rules are fair and just and that the Greensboro Ice & Coal Co. have violated them, then you contend that it is of value to you to refuse to place these cars, because of their violation of the rules. But if the rules are not just, or if the ice Co has not violated them, and that is established by an absolutely fair tribunal, then you do not contend that it is of value to the railroad to refuse to place those cars.

Objected to, as the witness is not the tribunal.

A. In answer to the first part of the question, I will say that the right to refuse to switch a car to a private siding by reason of the consignee's failure to pay demurrage charges is one of great value, because it involves the absolute ground work of car service and car employment. If we were required to set cars, regardless of whether the consignee complied with reasonable rules and regulations, then the car service would be worth nothing. If the rules and regulations are unreasonable, I do not think it of value to the railroad to enforce them.

Q. Or if the ice & coal company has not violated any rule, but is erroneously charged with having violated them, then it would be of no value to the railroad company, in your opinion, to refuse to place cars on this ground, would it?

A. I do not see that it would be of value to the railroad company to refuse to place cars when no one has violated a rule.

Q. When was that letter of Oct. 26th communicated to Col. Andrews?

A. It reached us on the 26th I think our files show that we wrote the same day, enclosing copy to the operating officers, and I presume it reached us on the 26th.

Q. In the absence of Col. Andrews, you were representing him?

150 A. Yes sir, I do not understand you to mean did I handle this letter on the 26th. I cannot say positively whether he was there or not. However, if he had not been there, I would have taken the same course that this *course that this* correspondence seems to indicate was taken. Possibly he handled it himself.

Redirect by Mr. BUSBEE:

Q. Would it be practicable for every question of the violation of a rule of car service to be tried by juries or by an impartial tribunal, in the administration of a railroad?

A. I think not, because it would keep one jury all the time.

Stand aside.

151 E. H. COAPMAN, witness in behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. NORTHROP:

Q. State your name and position?

A. E. H. Coapman, superintendent of the Danville division of the Southern railway.

Q. How long have you been in the railroad service in the United States?

A. For 25 years.

Q. In what departments?

A. In all the departments, except the mechanical.

Q. Does the right of an individual shipper to have cars transferred and switched upon a private or spur track, irrespective of the rules and regulations of the Southern Ry., involve the right to conduct the business of the Southern Ry.

Objected to by defendant.

A. Yes sir.

Q. What is the value of the right of the Southern Ry. to conduct and manage its interstate business at various stations in North Carolina?

Objected to by defendant.

A. The value can probably better be measured by the amount of revenue. The value of operating its business in the State of North Carolina, or in any other State, under its reasonable rules and regulations, is so vast that I cannot possibly estimate it.

Q. Explain *to* in dollars?

A. It is hundreds & hundreds of thousands of dollars.

Q. If one shipper at a certain station in North Carolina has a right to require a private siding put out upon which interstate cars must be switched and delivered, under his orders, what would
152 be the effect upon the business of the company, if all shippers had such rights?

Objected by defendant.

A. It would bankrupt the company.

Q. Could you do business then?

A. No sir, we could not.

Q. It would interfere directly with the management and control of the interstate business of the company?

A. It would, most assuredly.

Q. Give me an instance?

A. You could take right here at Greensboro as a fair example. For instance, between the hours of 12 noon and 1:30 p. m., we have a mail train from the North and a mail train from Goldsboro, N. C., another one from Mt. Airy N. C., one from Danville, Va., one from Winston-Salem, N. C., another one from Jacksonville, Fla., and another one from New Orleans, La., all arrive between the hours of 12 and 1:35 p. m. In addition to that, we have ordinarily a train of merchandise from Lynchburg, Va., another train of merchandise from Richmond, Va., and ordinarily two from Norfolk, Va. by way of Selma. They arrive here about the same time. If we were obliged to place a car on a certain siding at a certain time, between these hours, it would mean detention and delay and damages, not only to interstate freight, but to United States mail and to passengers. That is a fair example of the state of affairs that exists here day after day. It would operate as a direct interference to interstate commerce.

Objected to by defendant, as no such conditions exist in this case.

Q. Is there any contract, expressed or implied, written or oral, between Southern Ry. and the Greensboro Ice and Coal Co. with reference to this particular side track or spur, leading into their yard.

Objected to by defendant.

A. Not to my knowledge.

Q. Did you conduct negotiations with the representatives
153 of the Greensboro Ice & Coal Co. with reference to the changes that took place in the old side track, by which it was converted into its present condition?

A. Yes sir.

Q. Was there any contract between you, arising out of these negotiations there, or did you make any promises or agreement on behalf of the Southern Ry. with the representative of the ice & coal Co.?

A. I do not think I did.

Q. What is the status of that side track at present?

A. It is being operated. We are placing cars there.

Q. I mean with reference to any contractual relations that may be in existence between the parties, as a matter of accommodation or under contract.

A. It is operated as a matter of accommodation, pure and simple. There is no contract existing.

Q. Has that been its condition all along?
A. Yes sir.
Q. Then that spur track led into the yard of the Greensboro Ice & Coal Co. across the land other than that of the Southern railway?
A. Yes sir.
Q. Are there any rights of way granted to the Southern Ry. to pass over this land?
A. None whatever.

Diagram of the location of the side track in question, etc. introduced in evidence, marked Exhibit "E."

Witness is permitted to use this map to point out the different locations, subject to correction for any inaccuracy of map.

Q. Point out and mark on this diagram the portions of the present spur track, outside the Southern Ry. right of way, and between the fence of the ice & coal Co. property, which, according to your best information and belief, is land belonging to parties other than the Southern Ry.?
A. Understand, I am just simply doing this as I see the blue print. I do not know from my personal knowledge anything about the property rights there. All I do know is from what I have been told, and from the blue print.

154 Witness marks triangular strip south of what is marked Oak Hill roller mill.

Q. According to common report, to whom does that land belong?
A. To Mr. McAdoo.

Cross-examined by Mr. JUSTICE:

Q. I understood you to state that that spur track of the ice & coal Co. is now being used by the railroad?
A. Yes sir.
Q. And all the cars of coal consigned to the ice & coal Co. are placed on this trestle for unloading now, as they come in?
A. Yes sir.
Q. You find that it is an entirely safe and substantial trestle?
A. It is, yes sir.
Q. It can be used without interfering with the business of the Southern Ry., can it not? It does not inconvenience the railroad or interfere with its track any more to place cars on this track that it would on any other spur track?
A. If the company places cars on that track in due course of business, and under its reasonable rules and regulations, it does not, no sir.
Q. You can always get a car on that track within 24 hours of its arrival, without interfering with the business of the railroad company, can you not?
A. Ordinarily, yes sir.

Q. The only exception to it is when there is an unusual cong
tion on account of large amounts of freight received at Greensbor
A. That would probably be one cause for not placing a car with
a reasonable time.

Q. Is not it the custom of railroads, and particularly of the Sout
ern Ry. at Greensboro particularly, as well as at its other stations,
run spur tracks into manufacturing establishments and other indu
tries that receive a large amount of freight?

A. Yes, sir, in some railroads. In some of the roads I have work
upon, it was not part of the policy to put in private indust
155 tracks. Indeed, a great many roads object to it. But the p
icy of the Southern Ry. seems to be to put in industry track
especially in Greensboro.

Q. A car of coal can ordinarily be placed on that spur track of t
Greensboro Ice & Coal Co. and unloaded with as much facility as
can be placed on the public team tracks in Greensboro and u
loaded, can it not?

A. Yes I presume it could, taking into consideration the fa
that the car must be unloaded.

Q. These trains that you speak of, interstate trains, are not inte
fered with by placing the Greensboro Ice & Coal Company's cars
coal on this spur track any more than they would be by placing th
same car on an ordinary team track, and unloading it?

A. It depends entirely upon where the car is when the ord
comes. The point I made was this: If the railroad company wa
obliged to place a car on a certain particular private track, at a ce
tain hour, but if you take it in the reasonable course of business, an
it has a reasonable time, and with the reasonable rules and regula
tions of railroad business, we can place the car there without detai
ing those trains.

Q. Looking at these shipments of coal alone, and not considerin
in this question these other trains you have spoken of, this co
which was shipped to Greensboro consigned to the Greensboro Ice
Coal Co. can be placed on this side track and unloaded with no mor
inconvenience to the railroad company and without interfering wit
its interstate commerce rights, just as well on this side track as on
public team track, could it not?

A. Under those circumstances, yes sir.

Q. What is your official position?

A. Superintendent.

Q. You were superintendent of this division at the time thi
trestle was built, were you not?

A. Yes sir.

Q. When was this spur track placed there, the old one?

A. I cannot say from personal knowledge, but I believe it wa
placed there a good many years ago.

156 Q. How long have you know- of that old track being
there?

A. My first knowledge was shortly after I came here, in June
1902.

Q. You know it had been there years before ?
A. I was told so, yes.
Q. That spur track is in better condition for the purposes for which it is used now than when you first knew it ?
A. Yes.
Q. With the trestle there ?
A. Yes sir.
Q. It makes it more convenient ?
A. Yes sir.
Q. Did Mr. Thompson submit to you the plan upon which this trestle was to be constructed, before it was built ?
A. My recollection is that Mr. Thompson came to my office last summer, with a rough sketch, and asked if I had any objection to his building a trestle on his own land. I told him no.
Q. Did the sketch show the grading of the track and the details of the trestle ?
A. I cannot say as to that. My impression is that he had a very rough sketch.
Q. He then constructed his trestle, and changed the grading of the track some, did he not ?
A. I think he put a new trestle there.
Q. After he had done that, did anyone connected with the railroad company put the rails on that track and trestle ?
A. Yes sir.
Q. Who did ?
A. The road department, put them on there.
Q. Have you any idea what Mr. Thompson expended in these improvements ?
A. No sir, I have not the slightest idea.
Q. Whose iron was used to lay the track ?
A. The Southern railway's iron. He merely took the iron that was on the old track and put it on the trestle.
Q. Whose spikes were used ?
A. The Southern railway's.
Q. The wood and other material than the rails and spikes and plates and bolts was furnished by the Greensboro Ice & Coal Co.?
A. I presume so, yes sir.

157 Q. You said the road was put down. The regular hands employed by the Southern railway nailed it down ?
A. If I remember it right, either Mr. Thompson or somebody connected with them came into the office, and they wanted to know if we would not hurry the work through as a matter of accommodation, and we followed the work pretty closely and without rails.

Redirect:

Q. Do you remember the original application for an industrial track, dated September 5, 1902, signed by the president of the Greensboro Ice & Coal Co.?

A. Yes sir, I remember this application very well.

Original application offered in evidence, marked "Exhibit E." Defendant objected, on the ground that they will contend that the application was for a track on a different place, and nothing was ever done under that application.

Q. What became of that track contemplated in that application, and was it to pass into the yard of the ice & coal company, this same property ?

A. Yes sir.

Q. Only in a different location from the present one ?

A. I think the location is different. I will not be sure about that. But, if you please, I will give you the history of that track. As I remember it, that track had been talked about when I took charge of the division, on the 15th of June 1902. Mr. Gales, my chief clerk, who had been handling the matter, was thoroughly acquainted with it, and, if I remember rightly, he conducted nearly all the negotiations, though with what advice he wished from me. The deal had gotten so far that the application was signed by Mr. Worth and in the application he agreed to furnish the right of way for railroad purposes. When it came to the ice & coal Co.'s carrying out that part of the contract, that is, so far as getting the right of way for the railroad purposes from Mr. McAdoo was concerned, they could not do it, and, after repeated consultations, with Mr. Kimball, through our counsel, Mr. Gales and myself and the ice & coal Co. we found that we could not get the right of way over the McAdoo land, and the matter was dropped.

158 Q. I note here that Mr. W. E. Worth, president of the Greensboro Ice & Coal Co., in answer to the question whether or not he would secure the right of way clause, said yes. And on the back of this agreement the right of way clause reads as follows:

"That before there shall be any obligation on the part of the railway company to begin the construction and operation of said industrial track the part of the second part will, at own cost and expense, cause to be vested in the railway company by good and sufficient deeds of the lawful owners of the lands through which said industrial track is intended to pass, as shown upon said blue print, a right of way therefore outside of the limits of the present right of way of the railway company, of sufficient width for the safe and convenient construction of said industrial track, and the operation, maintenance and repair thereof by the railway company; *Provided*, however, that such deeds of conveyance shall be upon the express condition that, in the event that the said track shall be abandoned, and in evidence thereof, the operation of the same shall be discontinued and the railway company shall no longer require such right of way for said industrial track, then and in such event the title to said right of way, so vested in the railway company, and all rights incident or appurtenant thereto, shall revert to such grantors, their heirs, successors or assigns."

Q. Did I understand you to say that Mr. Worth undertook to secure a right of way across the McAdoo land, and failed?

A. Yes sir.

Q. Where was the land that he failed to get a right of way over?

A. It is the same land that they are occupying now. It is the same piece of property. I do not know whether it occupies just exactly the same place, but it is the land—outside of the fence and inside of our right of way. I cannot say it is the same spot.

Q. Indicate to the court where that 375 foot track was to be located in a general way.

A. It was to be 375 feet, starting from our right of way line and extending 375 feet west.

159 Q. That proposition having fallen through on account of the Greensboro Ice & Coal Co.'s having failed to secure the right of way, which they undertook to procure, what happened then?

A. They did business at the *oul* stand until Mr. Thompson came to my office and wanted to know if I had any objection to his putting a trestle on his own land, and changing the line of the old track, at his own expense, which was nothing more nor less than our taking the rails off the ground and putting them on the trestle. We lifted the rails up, and put them on the trestle. The company used their own men to lift up the rails as a matter of accommodation to the coal company.

Q. There was absolutely no contract?

A. None whatever.

Q. Did you make any promise to operate that track?

A. No sir.

Q. Did Mr. McAdoo ever object to our going over that land that you know of?

A. Not to my knowledge.

Q. Did you operate it subject to any objection he might make at any time?

A. Nothing was said about that at all. It was purely an arrangement made for the accommodation of the Greensboro Ice & Coal Co., made at their own expense and no contract whatever.

Q. Of what capacity, and how accessible, and how convenient are the public team tracks for unloading coal, at Greensboro?

A. As I remember it, we have three or four tracks in and around Davis St. One is called the stock yard track, it is just up against Davis St. Another is the eating house track, but I believe it is the same, the other is a coal track. And then we have a track on a street the name of which I do not recall, back of Davis St., we call the Odell track. It runs back of Davis St. We use that for a team track occasionally on the other side, on the side back of the Allen house. We have three or four tracks there including the coal trestle that I understand has been used by the public, that belongs to the Southern Ry.

160 Q. Is it in good condition?

A. I understand it is used every day.

Q. Is it opened to the use of any member of the public?
A. It is.
Q. Was it used at the time these four cars came along, the subject of this controversy?
A. Yes sir.
Q. Could the ice & coal company have used that if they desired?
A. Undoubtedly.

Recross:

Q. You spoke of a coal track. Is there a particular track abandoned to coal cars?
A. It is one of the queer ideas of switchmen to name the tracks. We call it the coal track, possibly because they set some coal on the track. The eating house track does not necessarily mean that there is an eating house upon that track. There is some little localism, but the name implies nothing whatever.
Q. And not that you had some particular track to place coal on?
A. No sir, those are all team tracks.
Q. How far is the coal chute you spoke of from the ice & coal company?
A. It is one block towards Goldsboro from Davis street. I will say it is about three blocks.
Q. Should the Ice & Coal Co. unload coal on that track they would have to haul it three blocks. Who used that track?
A. There is a firm of Matthews & Crawford, I think.
Q. Does not their business occupy it to its full capacity a good part of the time?
A. Possibly so, but I understand that it could be used by the public.
Q. It could be used by the public provided it is not being used by them.
A. No sir, we would give it to anyone who asked the privilege.
Q. It has not capacity enough to answer the demands of all those who buy coal in Greensboro?
A. I would not say so, no.

Stand aside.

161 W. E. COFFIN, witness in behalf of complainant, being duly sworn doth depose and say:

Examined by Mr. NORTHROP:

Q. State your name.
A. W. Coffin, agent of the Southern Railway Company located at Greensboro, North Carolina.
Q. How long have you been in the railroad business?
A. Since 1873.
Q. Are you familiar with the numbers of these cars in controversy in this matter, and their points of origin?

A. I will have to refer to my memorandum. (Consults memorandum.) Norfolk & Western No. 12,565 from Bluefield, W. Va.; Southern No. 70734 from Newcomb, Tenn.; Chesapeake and Ohio No. 17,895 from Pratt, W. Va.; Norfolk & Western No. 23,280 from Gaylord, Pa.;

Q. Are these the original way bills (hands way bills to witness). Are these the original way bills that came with these cars that you mentioned?

A. These are the bills.

Q. They show that the cars that you have mentioned came from the points that you have stated?

A. Yes sir.

Q. Do those way bills state what date they departed from those various points, if so please give them or any other information that they disclose?

A. Two of them have the date of the starting point and two of them have not. The Norfolk & Western No. 23,280 on Oct. 8th.

Original way bills offered in evidence by complainant, marked Exhibit "G."

Complainant introduced memorandum showing the movement of each one of these cars from the point of origin through various other points to Greensboro, N. C.

Southern Railway car No. 70,734 originated at Newcomb, Tenn. on the 11th day of Oct. 1903 and reached Greensboro on the 18th day of Oct. 1903.

Chesapeake & Ohio car No. 17,895 originated at Scranton,
162 W. Va. with splint coal, left Handley, W. Va. on the 13th day of Oct. 1903, reached Greensboro on Oct. 19th, 1903. This car was handled by some connection of the Southern railway.

Norfolk & Western car No. 12,565 loaded by the Elkhorn Coal & Coke Company in W. Va. on the 12th day of Oct. 1903, reached Greensboro at 8:25 a. m. Oct. 18, 1903.

Norfolk & Western car No. 23,283 loaded at Gaylord colliery, Penn. Oct. 8th, 1903, reached Greensboro Oct. 22, 1903.

The above statement was introduced and admitted as evidence without objection and marked Exhibit "H."

Q. What do you mean by the marks C. & O. & N. & W.?

A. Just Chesapeake & Ohio and Norfolk & Western.

Q. This other one was the property of the Southern railway?

A. Yes sir.

Q. Did you see those cars?

A. No sir, I did not.

Q. When those cars reached Greensboro did you issue the usual notice of their arrival to the Greensboro Ice & Coal Co.?

A. I did not myself we have a man that looks after that particular business.

Q. Was he employed under or through your department?

A. Yes sir.

Q. Have you got thos- original notices that were issued or copies of them with you?

A. I have copies of some of them, I think sir.

Copy of notice produced and read by witness.

Defendant objected.

Q. Did you issue the order which has been spoken of here to day on Oct. 12, 1903?

A. It was done in my name. I did not do it myself.

Q. Did you sign it?

A. No sir.

Q. You never saw it?

A. I saw a copy of it, yes sir.

Mr. Schenck is the man that sent that out, my chief clerk.

163 Q. Sent out over your signature?

A. Yes sir.

Q. He has authority to sign for you, has he?

A. Yes sir.

Stand aside.

164 R. R. ALLEY, witness in behalf of complainant being duly sworn doth depose and say:

Examined by Mr. NORTHROP:

Q. State your name and position?

A. R. R. Alley. I am clerk in the railroad office.

Q. What office.

A. In the freight department.

I attend to the car service business down there.

Q. Are you Mr. Coffin's chief clerk?

A. No sir.

I am the car clerk for Mr. Coffin.

Q Did you send out this notice?

A. I do not remember now. That is not my handwriting though.

Q. Whose handwriting is that.

A. I do not know It looks something like Mr. Schenck's.

Q. You had some personal conversation with the representative of the Greensboro Ice & Coal Company with reference to C. & O. car No. 17,895.?

A. It seems that the original bill of lading consigned that car to the Greensboro Furniture Co., "The Greensboro R. & Fur. Co." I asked Mr. Thompson about that car and he said it was his.

Q. Did you see those cars?

A. Yes sir, I saw them frequently.

Q. Where were they when you saw them?

A. On the team track and on the shifting engine &c.

Q. What were they loaded with?

A. Coal.

Q. Were they always in the same condition when you saw them, not broken or projecting out or anything of that kind?
A. They were in the same condition so far as I could see.

This witness was stood aside for the present.

165 S. R. ELLIS, witness for complainant being duly sworn deposes and says:

Examined by Mr. NORTHROP.

Q. What is your name and position?
A. S. R. Ellis. I am clerk in the yard master's office.
Q. What are your duties?
A. I check the yard side tracks, get a list of the cars that stand on the side track, and make what we call a five o'clock report.
Q. Then you take the position of each car in the yards every day on the side tracks?
A. Yes sir.
Q. Did you check the cars in question here, that is Southern car No. 70,734, Chesapeake & Ohio car No. 17,895, Norfolk & Western car No. 23283, Norfolk & Western car No. 12565?
A. I did.
Q. Please state where you found those cars after their arrival in the yard?
A. I found them on the—Southern car No. 70734 was standing (witness refreshes his memory from memorandum) on the coal square track. This record was made on the 23 day of October 1903. Chesapeake & Ohio car No. 17895 stood on Eating House track, east of Davis street on the same day. 12,565 Norfolk & Western, stood on Odell track, that is the new track that was being used at the time for a team track, on this same day. I did not have the other car. I do not remember the number now. On the 26th I have it on the team track, it was on the Eating House track, Norfolk & Western, 23283.
Q. Did you actually see those cars there?
A. Yes sir, this list was made while standing by the cars looking at the number, and the mark made in this book.
Q. You do that daily?
A. Yes sir.
166 Q. What were the cars loaded with.
A. Coal.
Q. Were those cars located at places accessible to the public and where they could have been easily unloaded.
A. They were on the team track. Yes sir.
Q. Were they in a place where other parties receive and unload coal?
A. Yes sir. They were on the team tracks. That coal square is used by the gas company almost exclusively. They are about the only people that unload coal there. The Southern Loan & Trust Company unload coal there.

Q. It is a usual or unusual occurrence?

A. It is usual.

Q. How many tracks are there down there which are used for the purpose of unloading coal?

A. Well, that depends on whether you can unload from any of those team tracks in that way.

Q. How many of those are there?

A. There is the Stock Pen, the Coal Spur, the Eating House on this side, and Odell's new track over on the end, my side, is the oil house, the Matthews chute, and what they call No. 4. That is above the platform.

Q. Is the Matthews chute a public chute?

A. Yes sir.

Q. Anybody can use it that wants to?

A. Yes sir.

Q. Who does it belong to?

A. To the Southern railway.

Q. Was it in good order and condition last Oct. when these cars arrived?

A. Yes sir.

Q. Could it have been used by the ice & coal company if they had so desired.

A. Yes sir.

Q. Are the facilities for unloading coal there furnished by the Southern Railway employees.

A. I never heard any complaint about its not being.

Q. These team tracks are all then accessible at that time, in October, available to the public for unloading purposes?

A. Yes sir.

Q. How long did these cars remain on the public tracks, on the yards before they were moved?

A. They were moved up to Hucomuga on Nov. 2.

167 Q. Did you see them moved ?

A. No sir.

Q. How do you know they were moved ?

A. I got a list of them Nov. 2, standing on Hucomuga track.

Q. Were they like they were when you saw them on the 23 of October ?

A. They were still loaded with coal.

Q. Had they been delivered to the Greensboro Ice & Coal Co.?

A. No sir.

Q. Still in the possession of the Southern ?

A. Yes sir.

Q. In their original condition when they arrived in the yards ?

A. Yes sir.

Q. Why were they moved from the team track to the Hucomuga siding ?

A. Standing on the team tracks, they have to shift the team tracks every day to put new cars on there. And they saw, I suppose, that

there was no prospect of delivering to them on the team track and they moved them up there to get them out of the way.

Q. Do you know if they knew anything about what passed between the ice & coal company and the Southern railway about those cars?

A. No sir.

Q. Had they been blocking the tracks there? Was that the reason they were moved to Hucomuga?

A. They could have still kept them on the tracks but it would have been an unnecessary shifting and handling of cars.

Q. Did they remain on the team tracks for an unusually long time?

A. From about the 23rd, I think all of them were on the track on the 23rd of October, until Nov. 2nd.

Q. You saw them there every day?

A. Every day.

Cross-examined by Mr. JUSTICE:

Q. Did you make these entries in this book.

A. Yes sir.

Q. Did you make them on the date that they show you did.

A. Yes sir.

Q. What is the date that you have Southern Railway car No. 9281 consigned to the Greensboro Ice and Coal Co. placed on the Eating House track.

A. On the 22nd.

168 Q. Is that when the car arrived at Greensboro?

A. I do not see the date on here that it arrived. It is not necessary for me to get that date.

(Witness during his entire examination used a memorandum book in which he made daily entries of the positions of the cars &c.)

Q. Have you got any entry of its having been placed on a track before the 22nd?

A. I do not see it on any previous date, back as far as the 17th.

Q. What do the figures 10/20 indicate?

A. Received 10/20.

Q. Was that Southern car 9281 consigned to the Greensboro Ice & Coal Co. received on the tenth month and twentieth day?

A. According to that, yes sir.

Q. Have you made an entry there as to what it was loaded with?

A. Wood.

Q. Turn to N. & W. car 23283 and tell me when it arrived in Greensboro?

A. That is the car that I stated that I did not have on here. This book does not go any further than the 23rd.

Q. You have not got it on here up to the 23rd?

A. No sir.

Q. If it had been on one of these tracks on the 22nd you would have had it on that book, would you not? Because you were going around making notes of the cars?

A. If I did not skip it or something like that I would.

Q. If your record is not erroneous, that car was not on the track on the 22nd of Oct, 1903?

A. No sir.

Q. How far is it from the crossing of Elm street and the railroad to the spur track of the ice & coal Co., from where Elm street crosses the main line of the railroad down here at the passenger depot, to the spur track of the Greensboro Ice & Coal Co?

A. Well, I should say it was about 350.

Q. How far is it from that point, where Elm street crosses the railroad, to the Hucomuga Mills siding.

A. I could not tell, only just a guess.

Q. Estimate it.

A. It is between a fourth and a quarter of a mile.

169 Q. At the time these cars were placed on the Hucomuga Mills siding the ice & coal company was begging the railroad to place them on the ice & coal company's siding, was it not?

A. I do not know about that.

Re-direct:

Q. Does your book purport to show the date of the arrival of the cars at all?

A. No sir. It is not for that purpose. This report is simply to show the cars on the yard, the consignee and what they are loaded with.

Re-cross:

—. But your book does show according to what you have told me, that Southern car 9281 loaded with wood was received here on Oct. 20th, was it not?

A. Yes sir.

Re-direct:

—. Does you- book show when any cars was received?

A. Usually when I take the number of cars, the yard conductor goes out with the list that the train conductor brings in, and chalks up these cars, and he writes the date they were received on it. This is what he does on the side of the car and when I come to cars that have got that on it, if it is not raining and it is washed off, when I come to cars that have got that on it, I will put it down.

Q. Then your record really simply is intended to show cars actually on the yard at any particular day, without record of the day of receipt?

A. Yes sir.

By Mr. BUSBEE:

Q. Just please state what the record in this book, what this particular record shows and is meant to show.

A. It is meant to show the position of the cars on the side tracks with the different parties to whom they are consigned.

Q. Is it or is it not a record of the date of arrival of cars, or does it purport to be such a record?

A. It is not a record of the arrival of the cars but where the
170 cars are on that date.

Q. Is it dated as of the date it is taken down showing the position of the car?

A. Yes sir.

Q. Explain what you said about the chalk numbers on the side of a car?

A. Why, when the train conductor comes in he will hand his switching list in to the yard conductor—the man who has charge of the way bills, and he takes the way bills and he takes a list to see that the cars are correctly entered on the list, and he hands it to the yard conductor, and he goes out with his chalk and chalks on the side of the cars where it is to be placed. If it is the team track, he marks it team track 10/22 or whatever day it is.

Q. Does the chalk mark on the side of the car change the date of your record as to when the cars — on the track?

A. Not at all. It has nothing to do with that.

Q. Is or is not that record made from the chalk marks or from the day on which you saw the cars on the track?

A. The date 10/20 would indicate the chalk mark on the car, but the date of the car on the track is at the top of the page.

Q. So that where there is a record of the date with the number of the car, such as 10/20, it would indicate what you found on the car?

A. Yes sir.

Q. But the date of the memorandum is on top of the page?

A. Yes sir.

Re-cross.

Q. Takes book, look at this please "So."

A. That is an abbreviation for Southern Railway.

Q. 9281, what does that mean?

A. That is the number of the car. The series number.

Q. G. I. & C. Co.

A. Greensboro Ice and Coal Company.

Q. "Wood?" What does that mean?

A. That means that the car is loaded with wood.

Q. "10/20, what does that mean.

A. That indicates as I have said, the chalk mark that was on the side of the car.

171 Q. What does that chalk mark indicate?

A. That indicates the day it was received.

Q. What date was that entry made which I have read?
A. Oct. 22nd.
Q. On Oct. 23, I find "So. 9281. 10/20. Wood. Greensboro Ice & Coal Co." That is the same car?
A. Yes sir.
Q. And that 10/20 there indicates the arrival of that car was on the 20th day of October?
A. Yes sir.
Q. I find on date of Oct. 22 four other cars that you seem to have indicated the arrival of them in Greensboro?
A. Yes sir.
Q. As I understand you, this record of yours is intended to indicate where you found the cars that you made a record of on the dates indicated?
A. Yes sir.
Q. But you do frequently indicate the date of arrival of these cars where you find that record made on the car itself in chalk?
A. Yes sir.

Stand aside.

172 W. G. JEFFREYS, witness in behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. NORTHROP:

Q. State your name and position.
A. W. G. Jeffreys. Yard conductor.
Q. What are your duties?
A. My duties are making up trains and breaking up trains, placing cars and switching passenger trains when it is necessary.
Q. Do you keep a record of the arrival of cars on the yard?
A. I have a work book when I have many city cars to handle. I keep a work book and put down all the cars that I place. The different parties to whom they were consigned, but I lost my work book and could not find it this morning.
Q. Did you see those four cars of coal, the subject of this controversy? And the subject of the commissioner's order on the yard?
A. Yes sir.
Q. Where were they placed?
A. They were placed on the team track, the coal spur.
Q. How long did they stay there?
A. I do not know exactly how long they staved there. I moved them from there to the Hucomuga Cotton Mill track on Nov. 2, 1903.
Q. Why did you move them?
A. The yard master told me they were badly in the way of other people delivering stuff, and the people would not unload them there and he asked me to take them over on the siding and keep them there.

Q. Were they loaded full?
A. Yes sir.

Cross-examined by Mr. JUSTICE:

Q. Did not he tell you that the Greensboro Ice and Coal Company would not pay some demurrage charges on some other cars and he was not going to place them until they did?
A. No sir. He did not. I did not know anything at all about that affair at that time.

173 Q. It was a great deal further to the Hucomuga Mills track than it was to the Greensboro Ice & Coal Co.'s track, wasn't it?
A. Yes sir.
Q. You say they were in the way there, blocking the track?
A. That is what the yard master told me, that they were in the way of other peoples' stuff, and they would not unload them, and he wanted me to take them away until they got ready for them.

Stand aside.

The following letter was here read in evidence:

"RALEIGH, N. C., *Nov.* 3, 1903.

Greensboro Ice & Coal Co., Greensboro, N. C.

GENTLEMEN: The commission are in receipt of your telegram and I am directed to say that they will bring suit for penalties in regard to the failure to obey the order of the commission as the law provides.

Very respectfully yours,
(Signed) H. C. BROWN, *Clerk.*

174 R. C. STRONG, witness in behalf of complainant, being duly sworn doth depose and say:

Examined by Mr. NORTHROP:

Q. What is your name and business?
A. R. C. Strong, attorney at law. I live at Raleigh, N. C.
Q. Please state what connection you had with this matter?
A. I am connected with this case as counsel for the North Carolina Car Service Association, and might say from the beginning, the case that is now in the State court or in the Federal court, dependent upon whether or not the petition and bond for removal be effected.
Q. You also represent the Southern railway in the State court in this litigation?
A. Yes sir.
Q. Will you produce a letter which was written to you by Mr. Justice?
A. Yes sir. (Produces a letter.) This is a letter that I received from Mr. Justice through the U. S. mail.

Letter read in evidence as follows:—

GREENSBORO, N. C., *Dec.* 29, 190

R. C. Strong, Esq., Attorney at Law, Raleigh, N. C.

DEAR SIR: *In re* Greensboro Ice & Coal Company *vs.* South
Railway Company I suppose you have fully determined to prose
your appeal and have the courts pass upon the exceptions raised
your exceptions, but before the matter goes further I desire to sa
explanation of the course my client will pursue, if the litigation
tinues, that he is not moved by any feeling or influence further t
that he will not permit, if he can avoid it, the railway company
ignore his rights. Mr. Thompson would be very glad if the ma
should stop where is it, and for you to abide by the deci
175 of the corporation commission. In entertaining this feeli
he is not at all influenced by a fear or any apprehension
the decision of the court will be adverse to him. If you sho
abide by the action of the corporation commission, and its decisi
Mr. Thompson would not feel like prosecuting the railroad comp
for penalties and bringing an action for punitive damages as he
the right to do. In other words, if he brings such action, it will
because the coure pursued by the railroad company makes him
that he is, beyond question, justified in asserting his legal rights
these actions. He is not the kind of man who is on the lookout
a technical violation of a penal statute that he may profit by a
brought for the penalty, but he is the kind of man, as your cli
has probably learned, who, when he feels his rights are ignored a
he is forced into a fight, can fight vigorously. Feeling that if
were to bring actions without saying this much to you, his attit
might be misconstrued, he has concluded, after consultation with
counsel, that it would be best to set himself right by addressing t
letter to you. Our court comes on the 18th day of January, and
would be glad to have a reply to this — time to have summons ser
returnable to that term of court, if we desire to do so. I have
known whether to address this letter to you alone, or to your as
ciate counsel also, and I have explained the situation to Mess. Ki
& Kimball, but leave you to communicate with Mr. Northrop, if y
desire to do so. I have not written to him.

With compliments of the season, I am,

Very truly yours, (Signed) E. J. JUSTICE."

Q. Will you state whether or not you had any conversation wi
Mr. McNeill or Mr. Beddingfield or other members of the comm
sion, the defendant in this case, subsequent to the passage
176 their order of Oct. 31, and what the substance of the conv
sation was.

A. I understand that the order of Oct. 31 was that in which t
Southern railway was ordered to place the cars upon the private s
ing of the Greensboro Ice & Coal Company, and if this is the ord
you refer to, I did not have any conversation with any of the gent
men prior to the date of that order. But I did have a conversati
later. It was on or about the time that we filed exceptions to th

order that I went to the office of the corporation commission to see the commissioners upon the question as to the filing of these exceptions. And Mr. McNeill said that the Southern Ry. had no right to file exceptions, and that it had no right of appeal under the statute. I tried to reason with him that he was mistaken as to that, and he permitted the exceptions to be filed, and that time denied that we had any right to a hearing upon these exceptions; and I understood at that time that he would not give us a hearing upon these exceptions. And I said to Mr. McNeill that I wanted to talk the matter over without any feeling on my part, and he said that he could not talk about the matter without having some feeling, and in substance he gave me to understand that he considered that the Southern railway had not obeyed the order of the commission, and that it was his intention to enforce that order with any means that he had in his power. And he mentioned the fact that there was a penalty imposed by the statute upon any corporation subject to the jurisdiction of the corporation commission who disobeyed an order of the commission. I then asked him what was his idea as to the penalty, and he said it was five hundred dollars for each *fay* that the order was disobeyed. He said this as I remember, it after he had taken down what is known as the North Carolina Corporation Commission act, and he looked at the act itself and found the section that seemed to prescribe that penalty.

177 I think I have stated that this was about the time that we filed the exceptions. I do not recall the date.

Q. What was his manner?

A. His manner to me was very courteous, as he always is, but he showed that he felt very keenly the action of the Southern Ry. in not obeying the order about the placing of the cars of coal. The conversation was at or about the time of the filing of the exceptions. It was not the day that we filed the exceptions to the order of the corporation commission but it was somewhere about that time, whether immediately before or after I do not recall.

Stand aside.

178 Mr. ALLEY recalled.

Examined by Mr. NORTHROP:

Q. Did you succeed in finding the records you were searching for?

A. The fourth car cannot be located. I suppose it must have been caught with another postal and made no impression.

Q. You cannot locate but three cars?

A. No sir.

Q. Will you state what your duties are?

A. My duties are to take down the cars as soon as they come in and enter them up on a book and make a report to the manager of the North Carolina car service in Raleigh and write these postals to each consignee.

Q. Will you be kind enough to give us from your books the d
that the notices were sent ou- to the Greensboro Ice & Coal Comp
of the arrival of these cars and the contents of those notices?
A. They did not give the hour of the arrival. It just gives
date and that is when the free time will commence. This no
went up on the 19th in the evening for Southern 7734.

By Mr. JUSTICE:

Q. Do you remember to have mailed this postal?
A. Yes sir. I mail them every evening.
Q. Does not somebody else sometimes mail them?
A. Yes sir. Sometimes the cashier's clerk brings them over
me, and some times I carry them over to him.
Q. Can you testify of your own knowledge that these cards w
mailed that evening?
A. No sir, I cannot.

By Mr. NORTHROP:

Q. Can you testify that the custom of your office is to send
these postals regularly in the due course of mail?
A. Yes sir.
Q. Be kind enough now to resume in reference to the car?
A. Southern 70,734.

This is objected to by defendant, because it does not appe
179 that the postal cards referred to were mailed.

Q. State what you did in regard to sending out notices of t
arrival of the car?
A. I wrote the notice and took an impression of it, directed it, a
I suppose I put it in the post office myself, as it was my duty to do
The date of it was the 19th of October, 1903.
Q. What are the contents of the postal?
Witness read postal notice, as follows:

"Southern Railway.

"GREENSBORO, N. C., *Oct.* 19, 1903.

"Greensboro Ice & Coal Co. Article coal. Initial So. No. 70,73
N. & W. 12,565, freight and charges, storage charges will accrue
less than car load freight after — hours from — o'clock — of t
date of this notice. Carload shipments will be subject to charge *if*
dollars per day or fraction of day, and for detention and use
tracks if not unloaded within 72 hours from 7 a. m. Oct. 20, 190
This Co. will be liable only as ware-housemen while the L. C.
freight is in their possession, holding same only at owner's risk
loss by fire. Strangers must present evidence of ownership or
identified before delivery will be made.

"(Signed) W. E. COFFIN, *Agent.*"

"Signing this notice authorizes delivery to bearer for —— —
consignee."

—. You sent the original of which this is a copy *of* the Greensboro Ice & Coal Company?

A. Yes sir.

Q. Please turn to your books here and tell us the dates upon which you sent a similar notice in reference to such other cars as you have record of. What day did you send that out?

A. Oct. 20, 1903. This is C. & O. car No. 17,895.

Q. The terms of that notice are identical with the one which you have just read?

A. Yes sir.

180 Q. Is there any other one?

A. No sir. I have lost one of them, I have got no copy of it.

Q. That accounts for three of the four cars in question?

A. Yes sir.

Q. And you say you have no record of the remaining car?

A. No sir.

Q. What is the number of that car that is absent?

A. 23,283, N. & W. I have a copy of what went to Mr. Albright to show that the car was received on that day, but I have no copy of the notice that was issued.

Q. What did you say with reference to Mr. Albright about that car?

A. It just give the arrival and the notice, Mr. Thompson was informed that this car was here at 11 a. m. on the 22nd.

Q. Are you satisfied such a notice was sent out?

A. No sir, that was a personal notice, that shows I gave him personal notice of the arrival of that car. I gave it myself. I gave it to Mr. Thompson or his clerk. I walk up there every morning to his place of business. That is 23,283.

Cross-examined by Mr. JUSTICE:

Q. That car then did arrive at Greensboro on Oct. 22, did not it?

A. Yes sir. At 4 a. m.

Q. Then the four cars that Mr. Thompson is complaining of not being delivered Oct. 20, that could not have been one of them, could it?

A. No, I do not think it could have been.

Q. I wish you would look at your entry of Oct. 20, and see if you do not find Southern 9,281.

A. No, I do not. This report closes at six o'clock at night. May be it may have come in on the 20th, after 6 o'clock.

Q. Look at the 21st then.

A. I find it.

Q. What day was 9,281 received?

A. That was received on the 20th, 1 p. m.

Q. What was it loaded with?

A. Wood.

The complainant does not desire by silence to seem to waive the

objection to any evidence concerning the receipt of a carlo
181 of wood because no order of the corporation commission w
made concerning this, and it has absolutely nothing to
with the four cars which are the subject of complainant's action.

Q. Your record shows then that on the 20th there were four ca
at Greensboro, consigned to the ice & coal Co.?

A. Yes sir.

Q. And there were only four cars on that day, so far as you ha
discovered, consigned to Greensboro?

A. I do not know, sir, whether there were or not.

Q. You have not discovered any other car than those four?

A. No sir, I have not looked through for the four.

Q. Does your record show where that wood came from?

A. No sir.

Stand aside.

Defendant here gave notice to Mr. P. R. Albright to produce th
record which he has of the arrival of all the cars at Greensboro, du
ing the month of October, 1903, which were consigned to the Green
boro Ice & Coal Company.

Statement about the cars was here verified by Mr. Coffin, the agen
at Greensboro.

182 W. A. SCHENCK, witness on behalf of complainant, bein
duly sworn, doth depose and say:

Examined by Mr. NORTHROP:

Q. State your name and residence?

A. W. A. Schenck, I live in Greensboro.

Q. Are you in the railroad employ now?

A. No sir, I am not. At the time of this occurrence, I was chie
clerk in the freight office at Greensboro, and Mr. Coffin was agent.

Q. State what you know about these four cars?

A. The four cars arrived in Greensboro after the 17th of Oct., on
which date there was an embargo against placing cars on the private
siding of the Greensboro Ice & Coal Co. They were placed on side
tracks, delivery tracks, and remained there some days, and they were
removed and placed on a storage track, because of the fact that they
weren't unloaded by the consignee, the Greensboro Ice & Coal Co.

Q. Did they refuse to pay freight on them?

A. They did not pay the freight on them until October 27, I be
lieve it was.

Q. Did you have any communication with any of the officers of
the Greensboro Ice & Coal Co. with reference to this matter?

A. Yes, I sent them a notice that that embargo would be plac
against placing cars on that siding after the 17th of October. That
was of course, under the direction of the agent. I do not think that
I had any conversation with regard to these particular cars until after

the order to place them, that is, after the agreement later, when they were finally disposed of.

Q. Did the Greensboro Ice & Coal Co. decline positively to take those cars unless they were placed on their private siding to be unloaded there?

A. They did not accept them on the delivery tracks where
183 we offered them, and it was my understanding that they did. I do not know that I have any personal knowledge—that they gave me any personal notice that they would not accept them on our delivery tracks.

Q. Is there anything further that you think of of importance?

A. I do not know of anything.

Q. Have you a copy of your affidavit?

A. No sir, there was an affidavit, but I have not seen it to-day. I cannot find it.

Cross-examined by Mr. JUSTICE:

Q. It had not been the custom of the railroad company to hold cars off of the siding of the Ice & Coal Co. because the freight had not been paid in advance, had it?

A. No sir.

Q. These cars were not held from the 20th or the 22nd of Oct. up to the 27th because freight was not paid—that was not the reason for the embargo?

A. They were placed on the delivery tracks, that was delivery, as we would term it. No, it was not held off of their track on account of that.

Q. It was held off of their track on account of a dispute between the railroad company and the ice & coal company, as to the ice & coal company's liability for $146 demurrage charges on other cars that had on Oct. 20th already been placed?

A. The reason was stated in our notice. I should think the notice would be the answer to that question.

Q. The reason you wrote that notice was because they would not pay the $146, was it not?

A. I do not know that that was all. It was because the rules of the car service assoc. had not been complied with. It might be that there were other things besides just the mere payment of the charge.

Q. There might be, but was there? The real reason that you did not place the cars was because the ice & coal Co. would not pay $146 which the railroad company claimed was due it.

A. I understood we would not place those cars beyond our jurisdiction, from under our control you might say, unless the rules were complied with.

184 Q. The rule that they failed to comply with was that they failed to pay this $146, was it not?

A. Yes sir, I guess so.

Q. The ice & coal Co. contended that it did not owe that money, did it not?

A. I do not know that they did. I do not think it is up to me to answer that.

Q. Did not Mr. Thompson say to you that he was not liable for it?

A. He might have said he would not pay it, but I do not know that he said he was not liable for it.

Q. Did not you tell him to go on and pay the money, and that it would be referred to your claim committee, and that if they considered that he ought to pay it, *and* they would return it, and if he would do that the cars would be placed immediately?

A. We told him that if he would pay this car service, and if the manager thought for any good reason that the car service charges should be waived, that he would refund it. And he said he preferred having the amount settled before the payment was made rather than that he should pay it and it should be refunded.

Q. Did not you tell him that if he would pay it as you suggested, that the cars would be placed immediately?

A. Yes.

Stand aside.

Complainant rested, unless through inadvertence they should have omitted some piece of evidence, in which case permission will be granted them to produce it.

Mr. P. R. ALBRIGHT re-called by defendant.

Q. Mr. Albright, are you acquainted with the demurrage rules of the North Carolina corporation commission?

A. Yes sir.

Book of rules identified, offered in evidence, marked Exhibit No. 1.

Complainant objected, on the ground that it is irrelevant.

Defendant introduced in evidence the record of the hearing at Greensboro, N. C. entitled:

"Before the North Carolina Corporation Commission.

185 In STATE OF NORTH CAROLINA on the Relation of the NORTH Carolina Corporation Commission upon the Complaint of the Greensboro Ice & Coal Company

vs.

THE SOUTHERN RAILWAY."

The record does not include the testimony of witnesses.

Marked Exhibit No. 2.

Complainant objected, on the ground that it is irrelevant.

It is agreed that this record may be withdrawn upon the filing of certified copies thereof.

It is also agreed that complainant may likewise substitute certified copies for any original exhibit they have on file.

186 M. W. THOMPSON, witness in behalf of defendant, being duly sworn doth depose and say:

Examined by Mr. BATTLE:

Q. State to the master, as far as you can, the history of the spur track to the property of the Greensboro Ice & Coal Company, of which testimony has heretofore been given in this case.

A. I will state that we had a siding running to the plant there that we have been endeavoring for quite a long time to have changed in some way, so that we could have a trestle and unload our cars. And I applied upon two or three occasion- to have this changed, and it was not until quite recently that permission was granted to raise the present track, move them slightly to the south of their present location, and build bins under the end of the spur track.

Q. When was this permission given, and under what circumstances?

A. I think it was along about the 1st of September, when I saw Mr. Coapman in his office, I made a tracing of exactly what we wanted to do there, so that he could see for himself, and I had a personal interview with him in the morning, and left this sketch with him. And he told me he would take it up with the working department, and let me hear later. And he sent me word that same evening that we could go ahead to work, I told him I wanted to get to work on it as it was getting late in the season. He sent me a written notice. It is part of the record, giving me permission to proceed with the work.

Q. Did you proceed and at whose expense, and how was the work accomplished?

A. We agreed to do the entire work at our own expense, to do all the necessary grading on the track, and we would have been willing to do the iron work, but they said their own men would do that part of it.

187 Q. To whom did the iron belong?

A. To the Southern Ry.

Q. What part of the work was done by the employees of the Southern Ry., if any, and at what time?

A. They replaced the material—we removed the rails under their instructions, I forget the exact date. We lifted them to one side, and proceeded to tear up the track, the part that was inside of our fence, and possibly a few feet outside of the fence, leaving a long length of track, possibly 150 feet, that was not torn up. We did the grading put up the timber part, and they raised up the rails up on top of the ties. We did all of the necessary grading inside and outside of the yard, the track outside of the yard remained in its former position, so that cars could be placed on the end of it. When we completed the iron work on the trestle, all that was necessary was to slide the track along up on this incline.

Q. Was any part of that 150 feet raised above the level of the track of the Southern Ry. at the time the trestle was built?

A. No sir, not until its final completion.

Q. How long a time was that spur track so raised as not to permit the cars being shifted upon it ?

A. It was about a day! They threw the track up there and fixed it right up. The railroad agreed to that.

Q. So that I understand you to say that about 150 feet was left upon which cars, might have been shifted, for the benefit of the Greensboro Ice & Coal Co. from the beginning of the track up to about the time of its completion.

A. Yes sir.

Q. How many cars could have been placed on that portion outside of the fence that was not raised ?

A. Two.

Q. State how convenient this spur track is for the purpose of shifting, in respect to the convenience of the railroad company ?

A. The spur track goes right off the main line of the C. F.
188 & Y. V. division of the Southern Ry., right at Elm St., which is the beginning of the yard for freight.

Q. Has or has not there been complaint of that as being an inconvenient arrangement for the Southern Ry. for the purpose of shifting?

Complainant objected as hearsay.

A. Yes sir. The track running into our yard was on quite a steep grade. Mr. Fry, of the construction department of the railroad ran his level and found it was a drop of 6 feet from the main line of the C. F. & Y. V. track where the spur track leaves, up to the end of that spur track, there was a drop of 6 feet, and that it was mostly low ground—that the ties were badly taken care of by the railroad company, and I have seen one engine there that was unable to pull a single empty coach out of that place.

Q. Was that before or after the trestle was built?

A. Before the trestle was built.

Q. What was the effect of the building of the trestle, with reference to that?

A. They could handle the cars in a very much shorter time, and with very much less trouble.

Q. Was the drop the end next your property, or near the railroad?

A. The drop was at the far end of the spur track.

Q. How about the 150 feet?

A. The 150 feet was a drop. From the original track to our fence line there was a drop of about two feet.

Q. Please state what you know about the dispute between the Greensboro Ice & Coal Co. and the Southern Ry., that led to the embargo with respect to shifting to the property of the ice & coal Co.?

A. When we were building this trestle, we have a regular shipment of cars all the year constantly coming into the plant, so that during the building of this trestle there were quite a number of cars

came in on these regular orders. It was impossible for us to handle these cars inside our yard, because there was no track there at all. The track had been taken up under railroad instructions.
189 The piece remaining outside of the yard was used for the purpose of handling these cars. I saw Mr. Alley myself, and requested him to place our cars out on this piece of track. Mr. Alley had charge of the placing of cars, and ordering them placed under shippers' instructions. His business was to see shippers, and find where they wanted the cars placed, and turn over directions to the yard master. These cars were never placed on this piece of track, nor were they at any time placed on any track where they were accessible to teams, and could have been unloaded. Shortly before the completion of the track, I was very much surprised to have a notice in regard to demurrage. I went immediately over to Mr. Coffin's office, saw Mr. Coffin and Mr. Schenck, and had a conversation in regard to this. They told me that they considered we would have to pay demurrage on these cars that had been held for the completing of the trestle. I told them I did not consider that we were liable for demurrage, that the cars had never been placed, and I told them at the time that we had a claim against the Southern railway for damages that we had sustained by reason of their action, that we had not intended presenting this claim at all, if they saw fit to continue this charge of demurrage against us, we were willing to pay charges for demurrage if they would give some consideration to the claim that we had against them. Of course they did not pay our claim of $1600 and we consequently did not pay their claim of demurrage of something over $100. Before the cars were placed, I believe the day before, Mr. Schenck called me up over the 'phone, and wanted to know if we were going to pay demurrage, that the cars would not be placed unless we would pay demurrage. I told him we did not intend to pay the demurrage, and it would be a question for them to decide whether they would place the cars or not. That, I believe, is the gist of the matter before the cars were placed.
190 They went and placed the cars, and when those cars were placed on there, I believe all of them were placed at the same time. And Mr. Coffin and Mr. Albright came to see me, and we went and looked over the track. I showed Mr. Albright where we wanted the cars placed, and he told me we would have to pay this claim or means would be taken to enforce the payment. I told him we were in the same position we were formerly, and we did not feel justified in paying the claim. Two or three days after that, Mr. Coffin came to see me, and told me he had heard from Mr. Albright that the association would agree to accept one-half the demurrage. I told him we did not feel justified in paying the balance and I thought if they were not charging the entire amount, they were not justified in charging any. So following that, on October 12th, I received a notice from Mr. Coffin, stating that embargo would be placed upon us on October 17th.

Q. Have you that letter?

A. I have not. On October 17, the embargo went into effect. We had one car that came in before that, that was not placed when the embargo went into effect, but they did place it a day or two afterwards, I suppose thinking they were negligent in not having placed the car when it came in. Subsequently there were four cars that came in the yard. Three of those cars were loaded with coal, and one car was loaded with wood. They refused to place these cars as I instructed them, and they marked the cars up for the team track. This was on Oct. 20th. I immediately wrote to the corporation commission, stating the fact that there were four cars on the yard. I did not state whether these cars were loaded with coal or wood, simply stated that there were four cars. And I believe the next day, I wrote a letter to Col. A. B. Andrews, to see if he could afford some necessary relief, stating the facts in the case. Subsequent to that, I wrote several letters to the commission, and one or two telegrams, and had telegrams from them, all of which are part of the record.

191 Q. This demurrage to which they laid claim was charged for how many cars?

A. The original charge of demurrage, I believe was for 13 cars.

Q. What disposition had been made of these 13 cars on which they claimed demurrage?

A. Part of the time, some of them lay on the track opposite to the factory, against some brick building, where it would have been impossible to have unloaded them, and the rest of the cars, I could not say where they were. They were not at any accessible point, and not placed anywhere that we were notified of their being at such point.

Q. Have you any written notice with reference to these cars?

A. I would like to say I have a written notice of a car of wood, which they said they had not sent out any notice of. I have that notice, showing the date of arrival, Oct. 20.

Notice offered in evidence, marked Exhibit No. 3.

Complainant objects to the introduction of this notice as irrelevant, and refers to a car of wood, Southern car No. 9,281, and is not the subject of the order of the commission. The order of the commission refers to cars of coal, and the bill of complaint only relates to cars of coal mentioned in the order of the commission.

Q. Have you any letter from the agent of the Southern Ry. at Greensboro, with reference to a dispute, and suggesting how the matter could be accommodated?

A. Yes sir.

Letter produced, and read in evidence as follows:

"GREENSBORO, N. C., *Nov.* 3, 1903.

The Greensboro Ice & Coal Co.

GENTLEMEN: Your letter of this date directing us to place N. & W. 10725, and 1902 and 6783 on your chute. Beg to advise that we

cannot comply with your request until the old account for car service is paid. When this is paid we will have them placed as per your order.

Yours truly,

192 (Signed) W. E. COFFIN, *Agent.*"

Q. State whether you have any other letter?

A. I have another letter of same date, November 3, 1903.

Letter read in evidence as follows:

"GREENSBORO, N. C., *Nov.* 3, 1903.

Greensboro Ice & Coal Co., Greensboro, N. C.

GENTLEMEN: Referring to the three (3) cars coal not yet ordered, the Nos. as follows:

N. & W. 10725, 11502, 6783. These cars are waiting your order to be placed on our team track delivery. If you wish*ed* them placed give us written order. If you wish them placed on your private siding we must insist that you pay the car service due on the old account.

Yours truly,

(Signed) W. E. COFFIN, *Agent.*"

The attention of the court is called to the fact that these are not the cars in question. The same refers to both these letters.

The cars mentioned in the two letters were the cars that come in subsequent to the four cars heretofore mentioned.

Q. State whether or not the contentions of the Southern railway agents at the station was identical or not from their position as expressed in these letters.

A. No sir, it was not.

Q. Was it identical as to the cause of not placing these cars?

A. Their position all the time was one of refusal to pay this money causing them to take the action that they did.

193 Q. As to the convenience of the team tracks spoken of in the evidence, for the delivery of coal to the Greensboro Ice & Coal Co., state how it was as to the team tracks to which they were alluding, where the four cars were placed?

A. The cars of coal were placed up one section of them which is beyond Davis St. To get to that, we would have to go out the road leading to Elm St. which is about 300 feet across the Southern tracks, then go up 600 feet across to Davis street, and then way beyond Davis St., and then they were placed on a track upon which we had never been allowed to drop the bottom of the cars, and I have never seen any cars with the bottoms dropped out on that point, as there is room for ten cars on that track, and if you dropped the bottoms out of cars on that track you would block up the rest of the track. And that is the main team track. If we had dropped the bottom there, we would have had the privilege of holding the car

there three days, and blocking the entire track. We have never understood that we could drop the bottom of a coal car there and have never seen it done. Furthermore, I would not consider that a safe place to unload coal. The distance between the tracks is 13 feet, and the cars project 2 feet beyond the track. That would leave 11 feet, and the track next to that is one of the main line tracks where cars were constantly passing. I would not consider it a safe place to put cars in there. The three cars of coal were placed there, and the car of wood was placed at the extreme end of the track, right up close to the Southern depot, car of wood, 9,281. I might state that would have been closer to where the cars were passing.

Q. What is the effect as to danger and the additional expense of any delivery of coal at the point of which you have spoken?

A. It would cost about $5 more to unload a car placed
194 where these cars were placed than if they had been put on our chute. $5 for each car.

Q. You have said that there was 150 feet of space that was not interrupted more than one day during the progress of the work of building the trestle, and slightly moved part of the track. What reason, if any, was given why delivery was not made upon that 150 feet of track, instead of the suggested delivery at points made convenient to your company?

A. I would like to state that we requested the cars to be unloaded there, they having offered them on the team track. These were subsequent cars—but the original cars upon which demurrage was due were never offered at any point. It was never suggested that they would place them at any point where we could get to them. It was in reference to the subsequent cars, the four cars, that they suggested they would put them on the team track. I believe that all the cars that came in there after the order were offered on the team tracks.

By the SPECIAL MASTER:

Q. That did not include the four cars?

A. The four cars, I believe they stated to me they would place these four cars on the team track, but the original cars were never offered to us at any point. We requested that they be delivered on this track that was not torn up, they never suggested placing them any where.

Q. So that all the cars were tendered upon the team tracks except the cars upon which they charged demurrage.

A. They stated that they would be willing for us to unload the cars on the team tracks. They placed four cars there, and we never unloaded these, and told them we would not accept them at that point, and no other cars were placed there, though if we had unloaded those, I suppose they stood ready to place the other cars at this distant point, so that we could unload them. But the original 13 cars upon which they demanded demurrage were not placed at any point, and not offered to us at any point.

Q. Why did not the railroad company not place or offer to place thos- 13 cars upon which demurrage was afterwards claimed
195 at a point accessible to the Greensboro Ice & Coal Company.

A. I told Mr. Alley we wanted those cars placed on the piece of track outside of the plant, the 150 feet of private track which was not torn up. I would like to state in regard to the 150 feet of track, that there is a sketch that shows that this track is a branch from the main line to 150 feet, you could only use it a certain distance beyond the frog, and there were two tracks coming together and blending in one, and there was a place where you could clear the main line with any two cars of coal.

Q. Why did Mr. Alley refuse to put them on this switch?

A. Mr. Alley did not refuse to place them on that piece of switch.

Q. Why were they not placed?

A. He told me he did not know whether that could be used or not, and I told him, and referred him to the fact that they were using it for other people's cars. During the time we wanted these cars placed at that point, there were five cars placed there at different times, one car was placed there for Mr. Townsend, and one for the Mills Lumber Company, and one empty car was placed there for Mr. Woodruff, and there were also two empty cars shifted in there.

Q. State whether or not the agents and employees of the railroad company refused or simply neglected to place these 13 cars on the spur track, as requested by you?

Objected to, as leading.

A. I think it is rather hard for me to answer that question. I believe it was negligence mainly, as we so understood that these cars would be placed, and we were needing fuel badly, and we saw them several times about placing the cars there.

Q. When you asked them, what was their reply?

A. Mr. Alley told me he did not know whether he could do it or not.

196 Q. Do you know what any of the others said?

A. No, I do not.

Q. What is the extent or amount of business done by the Greensboro Ice & Coal Company as to coal and wood and freight?

A. I figured it up some time ago, for a year it was in the neighborhood of $15,000 of freights.

Q. About how many cars do you receive during the year?

A. In the neighborhood of two hundred.

Q. Please state whether or not upon delivery at the points you have designated on the team tracks, your company could profitably carry on its business?

A. If we had to unload all our freight on the team tracks, no sir, we could not.

Q. State whether the track was changed as to its exact location, with reference to the trestle, in pursuance of the written contract introduced yesterday, or whether that contract was abandoned on ac-

count of the right of way over the McAdoo property, and whether it was independent of that contract?

A. This trestle was built independent entirely of the contract. The contract referred to a trestle at another point, removed quite a distance from where the trestle was built.

Q. Was there any written contract with reference to the track as it was really fixed?

A. No, sir, there was no written contract.

Cross-examined by Mr. NORTHROP:

Q. Yesterday we gave you notice to produce the notice for the following four cars, Southern car No. 70,734, N. & W. car No. 12,565, N. & W. car No. 23,283, C. & O. car No. 17,895,

A. All filed with the corporation commission.

Q. All the original notices have been filed with the corporation commission?

A. Yes sir.

Q. They actually got these notices?

A. They came in on the previous testimony.

Q. When this track was being torn up and the trestle was being built, your cars were coming in under order, as you say. Did
197 you make any provision for unloading those cars, pending the changes that you were making in your private side track?

A. Yes sir, we did.

Q. What were they ?

A. There was room on the far side of our land for just one car. We built a bin at that point, and handled that car up there. The other cars, we as stated requested the agent to place up the team tracks near our plant. That is a team track. This spur track is called a team track, and is so used.

(Witness takes blue print of the location of the spur track, etc. in his hands.)

Q. You mean you wanted them to put the cars somewhere on that track there as it was before you changed it ?

A. Yes sir.

Q. And that was during the period in which you were making your changes. Is that right ?

A. Yes sir.

Q. In other words, while you were in possession, you moved that track 14 feet from where it originally stood, to the position it now occupies. You declined to accept these cars at any other point except in between here ?

A. We did not so decline. There was no conversation to that effect.

Q. You required that they should be placed there and nowhere else ?

A. We asked them to place the cars here, and nowhere else. (Witness points out on map where he asked for the cars to be placed.) This track runs along over here. We had wood tracked up over

here. There was a point right in here where there was room for one car to be placed. We built a bine in there, and unloaded the coal right in there. This was a team track used by the public generally.

Q. How long did you say it took you to make these changes in this spur track leading into your yard?

A. I believe the men were working there for possibly a period of about 3 weeks. I would like to state also, that we could have completed the trestle in about half this time, if we had had material, which was deterred by reason of negligence of the Southern
198 railway. It arrived on the yard. Also in ironing the trestle when the trestle was ready to be ironed. I believe those are the two main reasons.

Q. Look at this profile map and state whether or not it shows the line and position of the old track before it was moved ?

A. I can tell all about it, as I made that sketch myself.

Q. Explain it to the court.

A. It is simply a rough sketch. I did not have any surveying instruments, but it is the sketch that I took to Mr. Coapman, and requested that we be allowed to change our track. This is the original track that runs down there, and I wanted it to be changed as this dotted line indicates.

Q. What is the distance from here to here, 14 feet, is it not ?

A. Yes sir. I cannot tell the exact distance. I expect it was possibly 12 or 14 feet.

Q. This leads into your yard, does it ?

A. Yes sir.

Q. While these changes were being made and this track was being shifted, 14 feet across, I understand that you desired during the process of those changes, to have the Southern railway place cars on that particular part of the track ?

A. No sir, that is not correct.

Q. Was it during the three weeks during which these changes were going on ?

A. Yes sir. I can explain that.

Q. Was it during the 3 weeks while the changes were going on and the trestle was being put up ?

A. This track here was not changed at all (the one outside the fence). This track remained about the same place right up here.

Q. Was not that track moved from here to here where the dotted line runs ?

A. No sir.

Mr. Northrop: I give you notice we can prove it according to your diagram.

Diagram is here offered in evidence, marked Exhibit "I."

Q. Were you going to change the railroad right of way ?

A. Part of it, and also part of the McAdoo land.

Q. Pending these changes, you insisted on our putting cars on t
upper track that was being changed and altered ?

199 A. In reference to that, I would like to state that the tra
upon which we requested these cars to be placed was not bei
changed. The track remained in its former condition, until t
trestle was completed, at the same point where it had been original
and the land to the south of this was graded and when the tres
was completed, and ironed, the iron and ties on the previous tra
were moved upon the graded portion, which took but a short tim
and cars could have been placed on this track previous to its bei
moved, and after it was moved, and at all times except during t
simple process of moving them back over there, which would ha
required but two or three hours.

By the MASTER:

Q. Was where you wanted to put the cars during the changes
your land or McAdoo's ?

A. Most of the track is included in the right of way, the far e
of it was on the ground owned by the Oak Hill Rolling Mill, and
had always been considered to be a team track, and was so used
the public.

Q. These changes that were being made extended through t
roller mill land, as I understand ?

A. The grade was entirely off the roller mill land, so when th
track was put over there, the track itself was completely off. It w
on there. (Indicates on blue print.)

Q. It is partly on the roller mill land ?

A. I cannot say positively, but I believe that now it is entirely o
there may be just a small edge that is not off the land.

By Mr. NORTHROP:

Q. You say this change including the trestle took about 3 weeks

A. We had been working there for about 3 weeks, yes sir.

Q. And it was during that period that you desired those cars plac
on that portion of the track beyond the Yadkin Valley right of wa
and your fence ?

A. No sir, between the Yadkin Valley main line and our fenc
part of it was on the right of way.

200 Q. How wide is that right of way?

A. They claim and the blue print shows 25 feet. I do no
know of my own knowledge.

Q. So the balance of the 150 feet was between the right of wa
and your fence, assuming it was 150 feet?

A. I will give you the exact distance. It is 66 feet from th
switch to the frog, 136 feet to the fence, the total distance is 202 fe
from the switch to the fence.

Q. The switch is how far from the rim of the right of way, 2
feet?

A. I have not measured it. I cannot say.
Q. The diagram shows that, does it not.
A. I do not know.
Q. How wide is the right of way.
A. 25 feet.
Q. Consequently the balance of the 202 feet is between your fence and the right of way.
A. No sir, it was not. The 202 feet was from the switch to our fence, if you will look at the blue print you will see that the right of way is a curved line, the only possible way to get the distance is to assume that the blue print is correct, and measure it on there, if the blue print is laid off by scale.
Q. We are talking about this track leading into the yard. I want to know whether or not such portion of it is between the rim of such portion as is outside of the right of way is not between your fence and the right of way?
A. As it now is, I think 25 feet. As it was formerly, I think probably 75 or 100.
Q. When you were up here before the commission, did you not testify as follows: in reference to the four cars that were the subject of the commission's order:
"Q. Did you not refuse to take them because they were not placed on your side track? A. We certainly did."
A. Yes sir.
Q. Did not you also testify:
"Q. I will ask you if you did not refuse to take any cars from the Southern railway unless placed on your own private side track? A. Yes sir, we refused to take some."
A. We refused to take some of the cars. There were one
201 or two cars that were not consigned to our yard that we accepted on the team track, because they went to other parties.
Q. (Reads:) "Unless placed on your own private side track. A. We offered to take some, not all, they have never offered some of these cars on the team track.
"Q. And did not you refuse to take them because they were not placed on your own side track? A. We certainly did."
A. I testified that we refused to accept them.
Q. In other words, you declined to take these cars, *on* any cars, unless they were placed on your private side track, is that correct? I mean the four cars subject of the commission's order.
A. We refused to take the cars because they were not placed according to our instructions, which, according to our understanding of the commission's ruling, we were privileged to give.
Q. What were our instructions?
A. That the cars should be placed at accessible points for unloading.
Q. Whether on your private siding or elsewhere?
A. According to my interpretation of the ruling, it stated that the cars should be placed for unloading whereever the shipper might designate. I designated my private siding.

Q. Then it is absolutely true that you declined to accept th cars unless placed on your private siding?

A. Yes, sir. That is a matter of record, some of the cars.

Q. I am asking about those particular cars of coal? Let me re the numbers to you, Southern, 70734, C. & O. 17,895; N. & 23,283, and N. & W. 12,565?

A. Yes sir, that was a car of coal.

Q. Did not you decline to take these four cars of coal the numb of which I have read at any other point except on your private si ing?

A. Those four cars that you have read.

Q. Yes, the subject of the commission's order.

202 A. I do not consider them the subject of the commissio order.

Q. Answer, whether you refused to accept those four cars of co the numbers of which I have just read?

A. The four cars of coal of which you have read the numbers refused to accept at any other point except upon our private sidin I would like to state this in reference to the four cars—the other si has in every case considered those four cars of coal. On Oct. 20, wrote a letter to the commission stating that there were four cars the yard here that the Southern Ry. refused to deliver to our priva siding. Subsequently they were made, I believe, subject to an ord I received a telegram from them that the cars that I had writt them about they had taken up, and ordered that they should placed. On Oct. 20, the only cars on the yard were three cars of co and one car of wood. They were all the cars there upon which I a dressed this letter. In each case they have maintained that the fo cars that arrived were of coal, but the first four cars that arriv were not of coal, one was of wood. The 5th car that arrived was wood. It arrived on Oct. 21 or 22. In regard to the four cars coal being subject of the commission order, I have no knowledge that. I have not seen the original order. The four cars that th have given me the numbers of I can refer to.

Q. I ask you if, at the time of the commission's order, on Oct ber 31, 1903, whether or not there were four cars of coal on the yard

A. I presume there were about 8 or 10 cars of coal on the yard that time.

Q. There were certainly four, were there not?

A. Yes, sir.

Q. Three of them were numbered N. & W., 12,565; Southern 70,834; and C. & O. 17,895, were they not?

A. Yes sir.

Q. Now you say that another one came in October 21 or 22, whic was N. & W. 23,283?

A. Yes sir.

Q. These four cars of coal were on the yard and had bee

203 tendered to you on the team tracks prior to Oct. 31, 190 were they not?

A. No special tender had been made of any of those cars that I remember. General instructions were issued to me that they would be placed on the team track. So far as those cars being subject of the order of the commission, I have no knowledge which cars were the subject of it. There were 8 or 10 cars when the order was issued, and it is impossible to tell which cars were the subject of the order of the commission.

Q. State where you ordered the coal that arrived here in October, consigned to you.

A. I suppose that coal came from Pennsylvania, Virginia and Tennessee.

Q. You suppose—do not you know?

A. I will state as a fact that it came from those points.

Q. Then all the coal that was consigned to you and arrived here in different cars during the month of October, actually came from Pennsylvania, West Virginia and Tennessee?

A. Yes

Q. Did you unload any of that coal on the team tracks prior to Oct. 31, 1903.

A. I believe we unloaded one car. I cannot say.

Q. So you could unload on the team tracks—it is feasible?

A. On certain team tracks.

Q. You do not buy any coal in North Carolina do you?

A. No sir.

Q. You said that this track led from the Yadkin Valley right of way into your yard was a public team track.

A. Yes sir.

Q. Is not it a fact that that track, after it leaves the right of way, crosses property that does not belong to the Southern?

A. Yes sir.

Q. And then it leads into your yard, which does not be-
204 long to the Southern?

A. Yes sir.

Q. What makes you say that it is a public team track?

A. Because cars are placed there for the convenience of anyone that may desire it, and it has been so used, and the owners of the property are willing that it should be so used.

Q. Is it used that way now?

A. Yes sir.

—. Who have had cars placed there recently besides yours?

A. I will state that there was a number of cars put there recently for consignees whom I do not know, exactly who they were except that cars were placed there for different parties. Mr. Pegram himself has unloaded cars there.

Q. Is not that the roller mill's land?

A. Not where he unloaded his wood, no sir.

Q. Whose land was it on when he unloaded it.

A. It was on the track on the McAdoo land.

Q. Mr. Pegram's land buts up against the McAdoo land?

A. Yes sir.

Q. So when you moved this track you moved it from Mr. Pegram's land on to McAdoo land?

A. No sir.

Q. Do you know of anybody else that ever used this track fo- unloading besides Mr. Pegram.

A. I believe the bottling Co. on the south side used it, and I believe Mr. Townsend still uses it. They are located on South Elm St., not far away.

Q. Whose land are they on?

A. On South Elm St. probably 100 yards from there.

Q. Is that allowed by Mr. Pegram's permission?

A. I cannot state as to that.

Q. Do not you know t-at Mr. Pegram says that it has been done by his sufferance and sometimes he regards it as something of a nuisance?

A. I know it has been used ever since I have been here.

Q. Do not you know it has been done by sufferance of Mr. Pegram all the time?

A. There was different conditions regarding present and past time, because the fact is now that part of it is off of his land. There is a roadway that runs right by his track, that is on Mr. Pegram's land, that is a public way running right alongside of this track.

Q. You were present when Mr. Pegram was cross-examined here before the commission, were you not.

—. Yes sir.

Q. Don't you remember his being asked the following question: "Q. All of the yard they talk about unloading is on your ground and it is by sufferance that I can go there, or anybody else?

A. Yes sir.

Q. I will ask you if it is not a public way for people who travel?

A. Yes sir, there is a provision in our deed for people to come in there.

Q. While unloading cars?

A. Yes sir, it is not specified so. We have allowed cars to be unloaded there from the fact that it is an accommodation, but it is frequently a nuisance. They soon make it a public unloading place at our expense." Do you remember his having said that?

A. I believe so.

Q. That land then crosses the Pegram land and the McAdoo land, and then it reaches your fence and goes into your private yard. Is not that right?

A. I do not know at the present time whether it is on Mr. Pegram's ground or not. I think it was moved pretty well to the side. I think possibly all of it may be off Mr. Pegram's land at present.

Q. As soon as it passes the Yadkin Valley right of way, it crosses other people's property, and does not belong to the Southern railway of the Cape Fear & Yadkin Valley, does it?

A. It must naturally do so after it passes the right of way.

Q. Have you any control over that property in between your fence and the right of way, you and your company?

A. What part of our fence? We have a fence on the east side and on the south.

206 Q. I mean the fence that we have been speaking about, the fence that crosses the spur track leading into your yard. Have you any control of the land outside of that fence, upon which the spur track is laid?

A. No sir, we have no control over it.

Q. I ask you again, have you seen anybody else unloading on that track except the bottling Co. and Mr. Pegram?

A. I have seen several cars being unloaded there. For what parties they were being unloaded I do not know.

Q. It might have been Mr. Pegram and it might have been the bottling works?

A. Yes sir. It might have been them, but cars are unloaded there for other parties.

Q. Who are they?

A. I tell you I do not know.

Q. You do not know whether they were for other parties or not, do you?

A. I know that the cars were being unloaded.

With the statement that we do not regard any testimony with reference to the thirteen cars which witness has been giving, as relative at all, accompanied by a motion to strike out same, for irrelevancy, subject to that reservation we will cross-examine him on that point.

Q. Did not you testify that you would not have unloaded or received for unloading any of the 13 cars upon which the $146 or $124 demurrage accrued, prior to Oct. 12, 1903, at any other point than in your yard or on this portion of the spur track leading into your yard from the main line of the C. F. & Y. V. Railroad tracks?

Defendant objected, because the relevancy of testimony in regard to the 13 cars is as upon the question of whether demurrage accrued on them while the track of the Greensboro Ice & Coal Company was being changed, and the demurrage could accrue only in the event of the cars having been placed at a point accessible for unload-

207 ing, and Mr. Thompson's purpose not to receive them at any particular point would not justify the railroad in charging the Greensboro Ice & Coal Co. that demurrage, unless the cars were actually placed.

A. I cannot tell as to my testimony. I do not remember as to that point.

Q. Is not it so?

A. Well, it is impossible for me to answer what I would have done in case of certain circumstances having arisen. Such an occasion did not arise. It would be useless for me to state what I would have done.

Q. Did you ask any of the railroad people to have them placed on any other spot?

A. No sir. That was the spot where we wanted them, and we gave them instructions to place them there.

Q. Did you ever instruct them to place them anywhere else?

A. I testified that I had instructed them to be placed at that point, so I could not have given instructions for them to be placed elsewhere.

Q. You did not, did you?

A. I did not instruct them to be placed elsewhere.

Q. Did you talk this matter over with Mr. Coffin after you had a conservation with Mr. Albright that you have already alluded to?

A. I do not believe I did.

Q. But you know that Mr. Coffin has the management of these matters here?

A. That is a nominal management, he does not have the practical management.

Q. Have you ever seen the rules of the Car Service Association of North Carolina?

A. No sir, I do not think I have.

Q. You never saw them in court here?

A. I believe they were offered in testimony here.

Q. You say you never instructed them to put these cars or any of these thirteen cars at any other place than on that spur track, between your fence and the railroad. Did you ask anybody to do it?

208 A. They never refused to place them where we had asked them originally, so we had no reason for asking them to place them elsewhere.

Q. I do not want reasons—did you do it?

A. No sir.

All this latter part of the cross-examination is subject to the original reservation by complainant.

Redirect:

Q. Did this car of wood that you have spoken of, Southern, No. 9,281, come from without the State or within the State?

A. It came from within the State.

Q. Did it pass *en route* out of the State of North Carolina?

A. No sir.

Q. The rules of the North Carolina corporation commission with respect to the delivery of cars, and giving notice of the arrival of cars, has been introduced in evidence. Are you familiar with the requirements of those rules?

A. In a general way, I understand the rules.

Q. Did the notice of arrival of any of those cars, I refer more particularly to the 13 original cars, comply with the requirements of those rules?

A. We never had any official notice of the arrival of any of the 13 cars.

Q. These postal cards that were mailed, did they contain the information required by the rules of the corporation commission?

A. No sir, they did not.

Q. In what respect did they fail?

A. They simply noted that the car had arrived, whereas the rules required that the freight charges and weights be also placed on the cards.

Recross:

Q. The notice you received were in the same form as those notices in regard to the four cars?

A. Yes sir.

Q. It is exactly the same matter, except as to the numbers?

209 A. Yes sir. The same general form.

Stand aside.

The hearing was here adjourned, to meet in Greensboro on Friday, March 25th, 1904.

210 *Notice Filed with Master's Report August 27th,* 1904.

In the Circuit Court of the United States for the Eastern District of North Carolina, Fourth Circuit. In Equity.

SOUTHERN RAILWAY CO.
vs.
GREENSBORO ICE & COAL CO.
Notice.

To the Southern Railway Company, the Greensboro Ice & Coal Company, Franklin McNeill, Samuel L. Rogers, and Eugene Beddingfield, members of the North Carolina corporation commission:

Take notice that, pursuant to an order of reference of the court herein, the undersigned will at 11 a. m. on the 18th day of March, 1904, at the Federal court room in the city of Greensboro North Carolina, proceed to take testimony and find the facts under the said order of reference.

This 8th of March, 1904.

JAS. E. SHEPHERD,
Standing Master.

Which notice is signed on back Battle and Mordecai of counsel for McNeill, Rogers and Beddingfield.

F. H. Busbee of counsel for So. Ry.

211 *Notice with Master's Report. Filed August 27, 1904.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
GREENSBORO ICE & COAL CO. ET AL., Defendants.

To the defendant The Greensboro Ice & Coal Co.:

The complainant, The Southern Railway Company, hereby gives you notice to produce at the hearing of the matters in controversy in the above entitled cause, before the standing master, Hon. James E. Shepherd, to be held on March 18th, 1904, at 11 a. m., in Greensboro, N. C., in the court-room of the county courthouse, or such other place as the said master may designate for such hearing, a certain letter, which is as follows, otherwise secondary evidence will be given of the contents thereof.

"RALEIGH, N. C., *Nov.* 3, 1903.

Greensboro Ice & Coal Company, Greensboro, N. C.

GENTLEMEN: The commissioners are in receipt of your telegeam and I am directed to say that they will bring suits for penalties in regard to failure to obey the order of the commission, as the law provides.

Very respectfully yours,
(Signed) H. C. BROWN, *Clerk.*"
SOUTHERN RAILWAY COMPANY,
By KING & KIMBALL, *Attorneys.*

Notice endorsed: "Received Mar. 12, 1904 Executed Mar. 12, 1904 by delivering a copy of the within writ to M. W. Thompson sec. & treas. of Greensboro Ice & Coal Co. J. M. Millikan, U. S. marshal By J. M. Baley, O. D. M.

212 *Second Hearing at Greensboro, N. C., March 25, 1904. Filed Aug. 27th, 1904.*

Mr. WILLIAM E. WORTH, witness for defendant, being duly sworn, doth depose and say:

Examined by Mr. BATTLE:

Q. What is your name and present place of residence?
A. William E. Worth, I live in Wilmington, N. C.
Q. Have you any connection with the Greensboro Ice and Coal Co., and if so, how long have you been connected with it?

A. I am president of the Greensboro Ice & Coal Co., and have been connected with this plant since 1890.

Q. Do you know anything about the spur track or side track that ran from the C. F. & Y. V. line into the property of the Greensboro Ice & Coal Co.?

A. Yes sir.

Q. How long have you know- of that track?

A. Since October, 1890.

Q. What is the location of that spur track now, and at the time you first became acquainted with it?

A. The spur track as located now is just about in the same place it was in 1890, but it is a great deal longer.

Q. To whom did the main track of the railroad company belong when you first knew it.

A. To the Cape Fear and Yadkin Valley railroad.

Q. What company owns it now?

A. The Southern railway.

Q. When did it succeed to the ownership?

A. About 1899.

Q. State by whom that spur track was run where it now stands?

A. It was originally run into our yard there by the C. F. & Y. V. railroad. In 1890, when I first bought that property, there was a small spur track that occupied a point to just about opposite
213 the old mill. In the spring of 1891, I got Mr. Fry to have it extended down into our property. Mr. Fry was the superintendent of the Cape Fear & Yadkin Valley railroad. I got him to extend the track down into our yard, so there could be more cars put on that siding.

Q. What was the capacity as to the number of cars it could accommodate before it was so extended?

A. It would only hold one car. You could not get two cars on it, and unload them without interfering with the main line.

Q. Who owns the fee simple to the land upon which the Greensboro Ice & Coal Co. is situated?

A. W. D. McAdoo.

Q. Is he the same man who owns the land to the east of the ice & coal Co.?

A. Yes sir.

Q. So that if the spur track ran over anybody's land into that of the ice & coal Co., whose land did it cross over?

A. It crossed over McAdoo's land and what I supposed was the right of way of the Cape Fear & Yadkin Valley railroad.

Mr. KING: Right along there, we would like for him to inform himself on that. He said he supposed it was the right of way. As a matter of fact, when we went there the other day we discovered it was not.

By the MASTER: You can cross-examine him on that.

Q. Are the ice & coal company the owners in fee simple of that property, or who owns it?

A. The Greensboro Ice & Coal Company occupy that property under a lease from W. D. McAdoo.

Q. How long since they have so held it ?

A. Since April 1891.

Q. Was the spur track alluded to extended under any contract, written or oral ?

A. It was extended under an oral contract.

Q. At whose expense ?

A. At the expense of the Cape Fear & Yadkin Valley.

Q. Do you know anything of the construction of a trestle inside of the yard of the Greensboro Ice & Coal Co.?

A. Well, I only know from the conversation and the correspondence with Mr. Thompson, the secretary & treasurer of the ice & coal Co.

214 Objected to, as hearsay.

WITNESS: What was done, was after conference between myself and Mr. Thompson. We had agreed to put in the side track, and with that end in view, the contract was drawn up by the Southern Ry. and when I came up here to decide the question as to just what we would do, and read over that contract, I declined to sign it, or any contract of that kind, for the reason we did not own the property, and we had no right to sign a contract giving them a right of way over something we did not own subsequent to that. Mr. Thompson, in his capacity as secretary & treasurer, had some agreement with them.

Q. Is there or is there not any written contract with reference to the change that was made ?

A. There is no written contract between the Greensboro Ice & Coal Company and the Southern railway with reference to this side track, that I know anything about.

Q. Who owns the iron that was used on that side or spur track ?

A. I suppose the Southern railway owns it. They put it there. That is my understanding.

Q. Was the iron that is now upon the track the same or different iron from that which was used before the trestle was built ?

A. I do not know of my own knowledge.

Q. Has the ice & coal company bought any iron to put upon the track ?

A. No sir.

Q. When this property was leased from Mr. McAdoo, for what purpose was it leased, and was there any understanding with reference to the spur or side track leading to his land ?

A. I leased the property from Mr. McAdoo with the ice plant already on it, for the purpose of course, of conducting the ice business but there was no understanding about any spur track. The spur track was there at the time, down just about up to the line of the property that I leased from Mr. McAdoo, but not on the yard.

215 Q. How far, with reference to your line, did the spur track run ?

A. As near as I can remember, it was only 3 or 4 feet, just a short distance, so that ordinarily, if someone else did not have use of the spur track, we could use it to throw out our fuel.

Q. Is the lease under which you now hold the property, the original lease made, or is it an extension of the lease ?

A. No sir. This is a new lease. The lease under which we now hold the property was made in 1899.

Q. State whether or not the spur or side track ran inside of the line of the Greensboro Ice & Coal Co. or not, in 1899, when the second lease was made ?

A. Yes sir, it came in on the property, as near as I can remember, almost down to the boilers. It was extended down there in 1895. And then afterwards, we extended it still further down in the yard ourselves.

Q. That was after the second lease ?

A. No sir, it was before the second lease. That was in 1896 or 1897. I think it was in the spring of '97 that we extended it down further still in the yard, to give us room enough to put two cars in the yard.

Q. Since your connection with the plant, has the railroad company, or its predecessor, the Cape Fear and Yadkin Valley railroad ever used this siding for any other purpose than that of your own freight ?

A. Oh yes sir! The C. F. & Y. V. R. R. push cars in there that we had nothing to do with whatever, standing them in there to get them out of the way. When we did not have cars in there, they used it just as they saw fit.

Q. State whether or not the railroad company has a right to go upon that spur track to get any of its cars that have been switched in there or not ?

A. Yes sir, they have a right to go there whenever they see fit.

Q. How is it with reference to the use of the track by the railroad company and the ice & coal Co.

A. Certainly the railroad has a perfect right to go in there whenever they like, to put cars on it or go in there to get their cars,
216 or any other way. I do not think we can object to their going in there, to take cars out, any time they want to take them out.

Q. To what extent, if at all is that spur track or side track necessary for the profitable conduct of the business of the ice and coal company?

A. As it is constructed now, it is of considerable advantage to us. As it was before, we had to unload all the cars of coal over the top of the car, with these gondola cars, we have to shovel it out from below As it is now, we can drop the bottom of the car out, and drop the coal right out in the bin, and we put it up for that purpose, to economize in the handling of coal. And the wood work of that trestle as it stands now, we built it, and paid for it ourselves.

Q. To what extent could the Greensboro Ice & Coal Co. conduct its business profitably, having coal delivered upon the team tracks of the Southern railway?

A. That would depend somewhat upon the price of coal. It would cost $1.50 to $2.00 per car more to handle the coal on the team tracks than to handle it from the elevated track that we have in there.

Q. Which affords more expeditious unloading of the cars, and the return of the cars to the railroad company, the team tracks or your side tracks as you have it.

A. The side track as we have it now, four or five times as fast. You could handle four or five times as many cars on our side track now as we could on the same sized track if it was down on the ground, like the team tracks.

Cross-examined by Mr. KING:

Q. Has your company any ground under lease not within your enclosure?

A. No sir, not that I know of.

Q. So then the land east of where the railroad enters your ground for some distance there, belongs to another party.

A. Yes sir it belongs to another party, and we have no control over it.

Q. Is it not a fact that just east of the land that you have
217 just spoken of, there intervenes the land of another party, to-wit: the Oak Hill Roller Mill Co., over which this track has to pass and does pass?

A. That belongs to Mr. McAdoo.

Q. You say this Oak Hill roller mill belongs to Mr. McAdoo?

A. I suppose it does, Mr. King. He told me so.

Q. Do not you know that it belongs to another company known as the Oak Hill Roller Mill Co., that is a corporation?

A. No sir

Q. And that Mr. McAdoo has no interest in it whatever?

A. No sir, I do not.

Q. You do not know how this is, one way or the other?

A. No sir, I do not.

Q. You did apply to the railroad company to get this track, did you?

A. Yes sir, I so understood it.

Q. And you made that application in writing signed by you, did you not?

A. I do not remember whether I signed it or not.

Witness is now shown Exhibit "F," and asked if that is not his signature.

A. Yes sir, that is my signature. That is the specifications, as I understood it, of what the siding would cost, or estimate of what the siding would cost.

Complainant objected to the witness saying what he supposed it was.

WITNESS: As I understand this, and understood it at the time that was simply an estimate of the cost of a track to be put in like we wanted it on our yard there.

Q. You read it before you signed it, did you not.

A. I did.

Q. And you agreed in this contract to procure a right of way, didn't you?

A. Not that I know of.

Q. Did you ever procure a right of way for the construction of that track?

A. No sir.

218 Q. So then your company had no right to pass over the land of Mr. McAdoo?

A. We have no control of it, no sir, we did not own it.

Q. When you say that the railroad company has the right to put cars on the chute in your yard, do you mean to say that the railroad company has the right to run in and out there any time, and stand cars there indefinitely, or without any restriction from you, do you? I am talking about your rights.

A. I do not know that I can answer that, as to what is our absolute rights.

Q. Have you any contract between your company and the railroad company to that effect?

A. No sir.

Q. Have you any contract between you and the railroad company, or was there ever any contract between you and the railroad company, to place cars on that portion of the track outside of your enclosure?

A. No sir. Not that I know of.

Q. Now, you spoke awhile ago about some oral contract. Did you ever make any oral contract with the Southern Ry. concerning this track?

A. Not with the Southern Ry., no sir.

Q. When you first knew this property, this track did not reach up to your eastern fence by three or four feet, you say?

A. We did not have any eastern fence.

Q. To your eastern boundary line?

A. No sir. As near as I can remember, it came within 3 or 4 feet of it.

Q. What was the distance from what may be termed the clearance post, or point from the main line, and the end of the track as it is extended.

A. About 40 or 51 feet, just about room enough on that little siding to stand one car in there.

Q. Do you know who had them put in there?

A. No sir.

Q. Nor for what purpose?

A. Not of my own knowledge, it was there when I first went there.

Q. And what you wanted was to get an extension of that into your yard?

A. Yes sir.

Q. Why did you have an enclosure around your property?

219 A. Well, the business has grown very much indeed since 1890, and there are more tramps and people of that kind going around now than there were 10 or 12 years ago, and some time ago we decided the best thing to do was to put up a fence. But for a number of years, we had no fence there at all.

Q. You ordered it put up to keep what is known as tramps out?

A. Yes sir, tramps and objectionable people generally. We enclosed it for the same reason that other people enclose their places of business.

Q. You wanted people to know that property was under your control, and to assert your rights to it?

A. No sir. We fenced it up for the purpose of having it under our control, to keep out objectionable people. But for the purpose of asserting our rights, I do not think that had anything to do with it.

Q. You had gates on the east side?

A. Yes sir.

Q. Are these gates kept closed or fastened at any time?

A. I do not know sir.

Q. Were you here at any period during the construction of this chute, and the track leading up to it.

A. No sir.

Q. So then you do not know when the work commenced nor when it ceased, nor how it progressed?

A. I do not know, except by correspondence.

Redirect:

Q. This paper marked "F" shown to you by counsel for complainant please state whether that is the paper under which the changes were made in the spur track by your company?

A. No sir. This spur track of my company was not made under any agreement with the Southern railway at all. My recollection of this paper is at the time that it was sent to me, when the extension was made, that it was simply a *pro forma* estimate of the cost of such track, as we had been talking with the Southern railway of getting there.

220 Complainant objects, as the exhibit speaks for itself.

Q. Was or was not the change made as specified in this paper or was that under an oral contract?

A. The change was made, but the contract that was drawn afterwards to go with this paper, we did not sign it. We refused to sign it. We had no right to sign for a right of way going through Mr. McAdoo's land, and I would not sign any agreement with the South-

ern railway at all, and this did not amount to anything—we did not act under that at all.

Q. Does the track as specified in this paper coincide with the track as it now runs?

A. No sir, it does not.

Q. It is a different track then?

A. It is a different track, yes sir.

Q. Look at this print (hands blue print to witness).

A. I do not know whether I would know from that whether it is exactly the place or not.

Q. How far from the line if the present side track did the line of the proposed track, as delineated on Exhibit "F," differ?

A. That track was intended to go out and swing way around here, in the yard, and this track that is in there now just simply goes right in almost in the same way that the track we had in there formerly did. It goes on a little way to the west, as you enter. That is very much like it, but I cannot say for certain. (Referring to blue print, Exhibit "E.")

—. The track in this paper "F" diverges considerably from the line of the original track?

A. Yes sir.

Q. Longer or shorter?

A. It would have been a longer track.

Recross:

221 Q. Is it not a fact that the track as now constructed, enters your ground substantially in the same place that it did or would have entered up Exhibit "F," only varying in degree to the south?

A. It was just about the same place. It would not make much difference right there, it was a little further over than it probably would have been. It would have come just a little bit further over in the one we have now than it would in the other.

Q. Further north or south?

A. It is a little further south now than it would have been under the paper "F," about 6 or 7 feet.

Q. The original plan contemplated going over the McAdoo land, that portion outside of your fence?

A. Yes sir.

A. And contemplated going a little nearer the roller mill building than at present?

A. Yes sir.

Q. I believe you or Mr. Thompson applied to Mr. McAdoo to secure his signature to pass over this ground lying outside of your fence, did you not?

A. I do not know sir. I did not.

Q. Do you say that Mr. Thompson did not?

A. No sir, I say I do not know.

Q. Do not you know that Mr. Thompson wrote you that he had applied to Mr. McAdoo, and that Mr. McAdoo would not do it?
A. He may have done so.

Redirect:

Q. Would Mr. McAdoo have forbidden you to have run along the line of the present spur track?
A. No sir, not that I know of.

Recross:

Q. Do not you know as a fact that Mr. McAdoo has been after the railroad, and saying if they did not arrange for compensation in some form or other, he was going to make them take the track off of his land?
A. No sir, I do not know that.

Stand aside.

222 H. L. HICKS, witness in behalf of defendant, being duly sworn doth depose and say:

Examined by Mr. COOKE:

Q. What is your name?
A. H. L. Hicks.
Q. Where were you working in September and October of last year?
A. I was working for the Greensboro Ice & Coal Co.
Q. What position did you hold?
A. I was engineer.
Q. Do you remember when the track was torn up in order to replace a part of it with a trestle?
A. Yes sir.
Q. Do you recollect whether or not there were cars that came into the yard of the Southern railway for the Greensboro Ice & Coal Company during that time?
A. Yes sir, those cars came in there.
Q. Do you remember whether or not all of the track was torn up?
A. No sir, it was not.
Q. Was any part of the track left undisturbed?
A. Yes sir, the part outside of the fence.
Q. Did you request any officers or agents or employees of the Southern railway to place any cars on that track during this time, of those thirteen original cars?
A. Yes sir.
Q. Were any of them placed there?
A. No sir.
Q. How many of them could be placed there at the same time?
A. Two cars.

Q. Did you see any body else's cars there?

A. Yes sir. I seen several parties unloading cars and cars being loaded there.

Q. State whether or not any one of those thirteen cars were placed accessibly for unloading by the Greensboro Ice & Coal Co. during that time. Where teams could get to them.

Complainant objected.

A. I never seen them where they could get to them.

Q. Did you need fuel at that time?

A. Yes sir. We needed fuel.

Q. Did you look for these cars.

A. Yes sir, I looked for them.

223 Q. How often?

A. I looked every day for a good while.

Q. Did you have any conversation with any of the agents or employees of the Southern railway about placing these cars, anywhere, and if so, what was that conversation?

Objected by complainant.

A. Yes sir. I seen Mr. Whitaker. They were loading a car at that old tank that belongs to Mr. Woodruff, down at that spur track that belonged to the mill, and I needed coal bad, and had to shut down once or twice that same morning on account of it, we were burning shavings and things. I went and asked Mr. Whitaker to pull that car out and pull a car in ahead of it, and pull it back so they could finish loading it. He promised that he would, and he seen the yard conductor, and it was not done. And I waited until about noon, and went over to see him again about it, and the car was then loaded, and I asked him if he would change it, and he told me he would not move it until it was built. And that was about the end of it. I then asked Mr. Jackson there at several different times to place some cars for us, and there was another conductor there whose name I do not know. I spoke to the other conductor who is there on that side yard at several different times.

Same objection by complainant.

Q. You say you remember when the track was torn up?

A. Yes sir.

Q. Can you state whether or not the railroad company had notice of the time that it was torn up?

A. Yes sir. Mr. Thompson told me to go down and tell the roadmaster that he was ready to tear the track up inside of the yard, and I went down and seen him, and told him we were ready and also told him we had some hands up there and could tear the track up ourselves, provided we had the tools to do it. And he told me to go and see the section master and get the tools, and I brought them up there and we tore the track up.

224 Q. Do you remember when the track was ironed?

A. Yes sir.

By the MASTER: Was there any gate there then?
A. No sir. The gate had been torn out.
Q. Had there been a gate there.
A. There had been, yes sir.

By Mr. COOKE:

Q. Did the railroad company put the iron on?
A. Yes sir. The men done it, I think, the employees—the section master and his hands.
Q. Do you know who the man was in charge of the force?
A. No sir. I do not know his name. I think I know his face.
Q. Would you recollect his name if you would hear it.
A. Yes sir.
Q. Was his name Medearis.
A. He was roadmaster, he was on the road at that time in that sort of business.
Q. Something has been said about the track being thrown over. State when the track was thrown over in its present position?
A. I*d* do not know just the date it was thrown over, I threw it over—that is, I was in charge of the hands, and I did the work of throwing the track over and grading also.
Q. Was it a few days prior to the completion of the trestle, or a long time before?
A. It was just about the time we were ready for the iron on the trestle.
Q. So the part not torn up remained in the original condition up to just a few days before the trestle was ready to be ironed?
A. Yes sir.

Cross-examined by Mr. KING:

Q. At what time, in what month and on what day of the month did you commence the construction of this chute and track?
A. We commenced working about the 1st of September, the digging down below where we were going to grade, to put the trestle up.
225 Q. When did you get up to the fence, in the course of your digging?
A. We never dug out plumb up to the fence, we dug out about seven feet of the fence, and then made the embankment up next to the fence. We commenced digging at the lower side of the fence.
Q. That is at the western extremity of the track as now constructed.
A. Yes sir.
Q. When did you first disturb conditions outside of your fence?
A. It was about the last of September when we commenced to tear that part up out there.
Q. So you were from the first to the last of September doing the digging on the inside of the fence?
A. No sir, not the digging.

Q. So you did not work then outside of the fence till about the last of September?

A. That is my best recollection, about the last of September we went outside of the fence, and worked on that part out there.

Q. What was the character of the work that you had to do outside of the fence?

A. We had to throw the track over, put the track over the fill that we had made.

Q. What was the first work you did outside?

A. The first work was to get the dirt out from between the cross ties, and get it in condition to jack it up.

Q. What was the next?

A. The next, we jacked the track up, and put it on some railroad bars, and slid it up on the embankment.

Q. When was the embankment made?

A. We made that before we disturbed the track at all. We had the embankment all made.

Q. When did you make the embankment?

A. We made that while we were putting up the wood work inside the yard.

Q. At what time did you commence making this embankment?

A. We commenced that just as soon as we would get through digging in the yard, I do not remember just the date.

226 Q. About what day would you say that was?

A. It must have been about the middle of the month, when we commenced to make that fill out there.

Q. Where did you get the dirt from to make this fill with?

A. We took the dirt that we dug out from below down there.

Q. That is, out of the lot?

A. Yes sir, where we dug out for the timber in the yard.

Q. That was hauled away as dug?

A. No sir, it was thrown up in the yard.

Q. And later it was hauled out?

A. Yes sir, later it was hauled out at this bank.

Q. Was not it a fact that they had to be unloaded across the old track?

A. The dirt? No sir.

Q. The old track was further north than it is at present, was not it.

A. Yes sir.

Q. Please state then where you stood your wagons when unloading them?

A. We did not use wagons, we used wheelbarrows.

Q. You have spoken about a car standing out there for Mr. Woodruff. Please state what time during the month that was?

A. I cannot say what time of the month that was.

Q. That was put there in order to load that old water tower, was it not?

A. Yes sir, that is what they were putting on it.

Q. Mr. Woodruff lived at Mr. Airy at that time?
A. I do not know where he lived.
Q. You know he does not live here?
A. No sir, I do not know Mr. Woodruff at all.
Q. When was the track put upon the present fill?
A. It must have been about the last of September when it was put up on that fill there. That is the part that went over on the fill.

227 Q. Do you know the date.
A. No sir, I do not know the exact date.
Q. Do you know within five days as to when it was done?
A. I should think that I do—between the 25th and the last of the month, I would say it was done.
Q. You are certain about that?
A. That is my best recollection.
Q. Have you testified to seeing any other car put there during this period?
A. Yes sir. There were two cars put in there one night.
Q. Empties?
A. I cannot say whether they were empty or not.
Q. I believe you stated on your previous examination they were empty, did you not?
A. Possibly I might.
Q. Dead cars?
A. What we call dead cars.
Q. By that you mean empty.
A. We call a dead car a car that is put on a track where it don't belong.
Q. So these two cars were on a track where they did not belong?
A. Yes sir.
Q. How long did they stand there?
A. They stood there, to the best of my recollection, 2 or 3 days.
Q. Have you testified to seeing any other cars standing there?
A. Yes sir. There was a car there of Mr. Townsend's.
Q. Did you see that.
A. Yes sir.
Q. Can you tell what day of the month that was put there?
A. I do not remember what day of the month it was put there—I just seen him unloading it.
Q. I will ask you if it is not a matter of fact that the Townsend car and the Woodruff car of which you have spoken were both put there before that work commenced?
A. No sir.
Q. You are sure about that?
A. Certainly I am.
Q. The company does stand cars loaded with coal and other freight on their team tracks just east of the main street of the city, do they not, of the old depot site?

228 A. East of South Elm street, yes sir.
Q. Is not it a fact that Mr. Thompson took the position,

at that time, that he would not unload any of his freight except what was put on that chute ?

A. No sir, Mr. Thompson never spoke to me about that.

Q. Did not you say on your previous examination here, that he took that position ?

A. No sir.

Q. Have you read, or had read to you, your testimony given here on a previous occasion about this matter ?

A. I have read it. I look- over it once as well as I can remember. (Hands copy of testimony to witness.)

Q. You read this, did you ?

A. Yes sir.

Q. You did not say to the question as to whether Mr. Thompson would receive this freight, that the bookkeeper told you he would not take it anywhere except on his chute ?

A. Yes sir.

Q. You still adhere to that—that is a fact, is it ?

A. My real statement was that the bookkeeper told me so. I still say that the bookkeeper did tell me so.

Q. That Mr. Thompson would not take the freight at any point except the chute. He did tell you that, did he ?

A. Yes sir.

Q. How many days were you engaged in the construction of the track outside of the fence, up to the time you were ready for the rails to be laid ?

A. From the first work we done outside, I should think we were ready in three or four days, had everything done in that time.

Q. How many days after you got ready for placing the rails was it before the railroad people came ?

A. They placed them right away. The section master came there, and straightened out the track, after I throwed it over he came in there and straightened and lined it up, and put in some more ties.

Stand aside.

229 Mr. WORTH recalled.

Examined by Mr. BATTLE:

Q. You said in your examination a while ago that the Greensboro Ice & Coal Co. had no control of the land east of the fence. What did you mean by that ?

A. I meant that we did not exercise ownership over it. We do not own it, and in that light we do not control it. We had, however, the right of ingress and egress, that was the only way we had to get in there, and our lease provided for us to pass over that property to get in and out of the lot—by lease from Mr. McAdoo.

Q. You did not mean you did not have a right of way ?

A. No sir. I did not mean to convey the idea that we did not have the right of way, but we do not control it as owners.

Recross:

Q. Where is your lease ?
A. Here.
Q. Are they recorded.
A. I do not know. I think it is.
Q. Do not you know that the contract you had with Mr. McAdoo had reference to wagons and vehicles of that character, and no reference to railroad cars ?
A. That is right, it had reference to wagons and vehicles and cars, we made no arrangement with Mr. McAdoo about a railroad or anything else.
Q. Is that your lease ?
A. Yes sir.
Q. Is that recorded or not ?
A. Yes sir, that is recorded.

Stand aside.

230 F. A. MATTHEWS, witness on behalf of the defendant, being duly sworn, doth depose and say:

Examined by Mr. COOKE:

Q. Your name is F. A. Matthews ?
A. Yes sir.
Q. Where do you live ?
A. Greensboro.
Q. What is your business ?
A. Coal and wood business.
Q. Do you know whether or not the Southern railway has some coal bins in the city of Greensboro for the purpose of unloading coal cars ?
A. Yes sir, several at my place. They are put up there by the C. F. & Y. V. Company.
Q. Who used these bins ?
A. We have had them full for the last year or two.
Q. Would it have been practicable for anybody to have used those bins other than yourself, during the time spoken of ?
A. We had them full—we bought coal—our stock of coal, in August, and we had them full.
Q. Do you know about the amount of business that the Greensboro Ice & Coal Co., do, approximately ?
A. No sir, I know they do a large business, but as to the amount I do not know.
Q. You know in a general way about how large a business they do in coal and wood.
A. Well, I do not know, I know about the business we do, and I think they do more business than we do, in the way of coal, because they handle a great deal of coal by the car and we do not handle it.

Q. Would it be practicable for them to do business at a profit, doing all their business from the team tracks?

Objected to by complainant.

A. No sir I think not.

Q. In regard to these bins that you were talking about, just now, state whether or not there have been negotiations between yourself and the railroad company by which you were to get the entire track?

—. There has recently, but there had not been until recently. In other words, they are charging us rental. We have never
231 had to pay any rental up until recently, but now they are asking us rental, and they had laid off a plat we were to occupy taking in all these bins.

Q. You are familiar with the yard of the Southern railway at Greensboro.

A. Yes sir, tolerably so.

Q. Are there any public coal chutes in that yard other than the one you have just told me of?

A. None, but that, that I know of.

Cross-examined by Mr. KING:

Q. During September and October of last year, you had no contract with the railroad company about the use of these bins occupied by you?

A. Not at all.

Q. Of course when there were no demands for them, you used them in such a way as best subserved your purpose.

A. Yes sir. We bought our stock of coal in August and September, 700 tons, and unloaded it.

Q. You were paying nothing for the occupancy of that lot?

A. No sir, not at that time.

A. And had no contract with the company?

A. No sir. I had none with them?

Q. And never had paid anything for the use of them?

A. No sir.

Q. It is in fact a public bin?

A. Yes sir, it was at that time.

Q. Until after this time?

A. Yes sir.

Q. The railroad company have considerable space covered up with what they call team tracks, have not they?

A. Yes sir.

Q. Is not it a fact that the Greensboro Gas Co. for many years, unloaded its coal from these public team tracks, of which we have just spoken?

A. Oh yes sir, they had no other means of getting at their place.

232 Q. Is not it a fact that a great many other people from time to time unloaded coal on this place?

A. Yes sir. They used to unload some of them i- our place when we did not have the chutes full, but this year we had them filled up.

Redirect:

Q. How long have you been in the coal business here?

A. 10 or 11 years.

Q. Do you know of any coal company doing the busines of buying and selling coal for profit, which has not a side track over which it does business.

A. No sir.

Q. Do you know, of your own knowledge, whether or not the Southern railway forces any other coal company in the city of Greensboro, to unload from the team tracks exclusively?

Complainant objected.

A. No sir. Not anybody engaged in the coal business. These cars, individual orders of cars, they are unloaded on the team tracks, and in fact, they do not have to wait, and it is to be unloaded in such a length of time, and they take it right off the coal car. We cannot do it in our business.

Q. In reference to these cars of coal Mr. King has spoken of?

A. He spoke of the gas coal that comes for special parties to the gas house.

Q. Is not it a fact that sometimes cars come for special individuals, for instance, a car comes to your company for the Normal school, you order it sent on your yard for some other person?

A. Oh, yes sir; but if they want to haul it themselves, and haul it without waiting, we put it on the team track for convenience.

Stand aside.

233 Hon FRANKLIN MCNEILL, witness in behalf of defendant, being duly sworn, doth depose and say:

Examined by Mr. BATTLE:

Q. What is your name and employment?

A. Franklin McNeill. I am chairman of the corporation commission of North Carolina.

Q. How long have you occupied that position?

A. Since April, 1899.

Q. Please state in your own way, and as succinctly as practicable, the circumstances under which the order of October 31, 1903, was made, with reference to the spur track of the Greensboro Ice & Coal Company, and what notice, if any, was given to the authorities of the Southern railway, previous to such order?

A. The corporation commission received a letter from Mr. Thompson, secretary of the Greensboro Ice & Coal Company, dated the 20th of October, and in which he stated that he had received a

notice from Mr. Coffin, I think, the agent of the Southern railway at Greensboro. I received a letter October 20th, enclosing copy of the notice of October 12th, signed by Mr. Coffin, I think it was referred to as an embargo. And we received a letter from him of October 26th, which I think is also in the record. Immediately upon receipt of this last letter, I think it was, we 'phoned, or asked our clerk Mr. Brown to 'phone Mr. P. R. Albright, manager of the Car Service Association, asking him to come to the office. We were informed that he was not in Raleigh, and I think that he was either in Greensboro or Wilmington, and we asked that he come to the office as soon as he could after his return to Raleigh. I think some day soon after that Col. A. B. Andrews first vice-president of the Southern railway came in the office and we mentioned this matter to him, and he said that Mr. Albright had been to Greensboro and investigated the matter and had explained it to them, and we thereupon concluded to wait until Mr. Albright returned. When he did return he came to our office, or he came to our office soon
234 after that, I am not sure when, perhaps the 29th of October, and these letters from Mr. Thompson, secretary, were read to him or show- him, and he was asked what he had to say. Mr. Albright was manager of the Car Service Association, and this matter, we were informed, was one within his jurisdiction. He told us that he had been to Greensboro and had investigated the matter fully and then gave us his version of the matter. He explained that the order or notice of October 12th was issued because of the fact that the Car Service—that the Ice and Coal Company owed them demurrage charges, I think $146.00 or $124.00 and they refused to pay it, and therefore on that account that notice was issued. The railroad company refused to place these four cars because of the failure to pay that $146.00 or $124.00 demurrage. He did not dispute the fact that the cars were here, and that the ice and coal company wanted them on their private siding, but he said that that was the reason that it was not done—that it had not been done. We asked him of the Greensboro Ice & Coal Company was a solvent company and he said that they were. We asked him if their credit was good and he said that he thought so, and then we asked him if there had ever been any complaint about their withdrawing cars, or any abuse of cars on this private track, and he said none. And then we asked him if there had ever been in North Carolina any abuse of the use of private sidings where cars were switched on them, whether there had ever been any abuse of it, and he said not to his knowledge. And then we told him that we thought that upon his own showing that these cars ought to be placed. He insisted that the demurrage charges ought to be paid, and we asked him if Mr. Thompson did not dispute the justice or correctness of these charges, and he said he did. And we had Mr. Thompson's letter received, I think, that morning, saying that he had heard that Mr. Albright had represented to someone that he had promised to pay the charges,
235 and he asserted that that was a mistake, and he had maintained the same position at the time, that he would not pay

these demurrage charges. These are about the facts as I recollect it. He did not ask us to continue the matter, or have any further hearing, or say that there was any additional fact that he wanted to prove. We told him that we thought upon his statement of facts that these cars ought to be placed. I think he said that the matter had been referred to the general superintendent, Mr. Ackert, in Washington, and that he had not heard from him,—that he would probably hear from him soon and have instructions. We waited that day, the 29th I think it was, and the 30th, and he informed us, I think, that he had not heard anything from him, that he was expecting to but had not. And about the middle of the day, not hearing from him on the 31st we made this order, reciting, as it appears in the record, I think, the facts that were in dispute—The four cars were here, that the railroad company refused to place them on the siding unless the demurrage on thirteen or fourteen cars, which had already been put on the siding and emptied and released, was paid, and we made the order October 31st.

Q. State if anything followed upon the making of that order and its service upon the parties interested?

A. The order was served, I think, on Col. Andrews that day, I think perhaps Mr. Strong came in that afternoon or evening, Mr. R. C. Strong, who is the attorney for the Southern railway and for the car service association, I think that was his representation. He is an attorney at law. I am not sure that he said he was attorney for both of them, or what we understood he was. He said, "This order says it is 48 hours from noon, from Saturday the cars must be placed. Does that mean, inasmuch as Saturday intervenes, noon of Monday or noon of Tuesday?" And we told him noon of
236 Tuesday, was what we intended. I remember that distinctly.

I do not remember the other matters that Mr. Strong speaks of, as occurring. I do not remember that I ever told him that he could not appeal, or that he could not except. I do not think he asked permission to except, and I do not think any other attorney ever did, upon any matter before us. They took it as a matter of right, I think, to except under the statute, but asked no permission. As a matter of fact, I was not in Raleigh at the time, these exceptions were filed. I left Raleigh on Tuesday morning on the 10:30 train for Fayetteville. The exceptions were filed, as appears in the record in our office at 11:40. I was gone then until Friday, and returned to the office on Friday. And I saw Mr. Strong again, I think it was that day. I think his probable purpose was to ask us if we had set a date or made an order about the exceptions, and we told him we had not, and he said "Well, I want to go to Oxford," as well as I can recollect, "to-morrow." He wanted to go there Saturday, "and I do not want anything done about this matter in my absence, that is I do not want you to hear the exceptions in my absence." And I think we told him that we would not hear the exceptions in his absence. The next time I saw Mr. Strong, I think was Tuesday morning, when he and Mr. Albright came in and they asked us to

fix a time to hear exceptions, and we asked them if the 12th of November would suit them, and they agreed. I think we spoke of some other day, probably the 11th, and they said the 12th would suit them better, and thereupon we fixed that day. I think Mr. Strong is mistaken about my saying that the penalty was $500 per day. He asked what we were going to do about it, I think, and we told him we were going to enforce the order as the law provided, and to enforce that penalty if it was not obeyed. I do not recollect saying to him, or his saying to me, that he wanted to talk it over
237 without feeling, or my saying to him that I could not discuss it without feeling. I felt very much in earnest about the matter, and may have spoken that way. I forgot one thing, about one of Mr. Albright's points. I think Mr. Albright called attention to our rules, and said that rule 8, directed that the car be placed at an accessible place for unloading within forty-eight hours. And we told him that our construction of the rule was in this instance, that the accessible place was on that side track, for the unloading of coal and wood. And we also spoke of his own rules, but he had not brought them in with him, about placing cars. I mean the North Carolina Car Service Rules, rule 5, section 1, which is as follows:

"Cars containing freight to be delivered on carload delivery tracks or private sidings, shall be placed on tracks designated immediately upon arrival, or as soon thereafter as possible. When delivery cannot be made on specially designated yards or tracks (on account of the tracks being fully occupied, or for any other reason beyond the control of the carriers) delivery shall be made at the nearest available point.

SEC. 2. Cars for unloading shall be considered placed when such cars are held awaiting orders from consignors or consignees and for the payment of freight charges or surrender of bills, of lading.

SEC. 3. Cars for delivery upon private tracks already fully occupied and delivery thereof impracticable, shall be considered placed at the time of their arrival at receiving yard."

(Witness read this from a rule book of the car service association of date previous to the one of July 15, 1903 which is in evidence as Exhibit "A." In Exhibit "A," this is Rule X. on page 7, sections 1, 2, and 3).

WITNESS: We insisted that in either view, according to his rule or ours, that these cars ought to be placed on this private siding.

Q. Where were the exceptions heard?

A. The exceptions were heard in Greensboro on Nov. 12th. We consulted them about the time and place, and fixed upon this place.

Q. Did the exceptions appear in the record?

A. Yes sir.

Q. The exceptions and the examination of witnesses was
238 also here?

A. Yes sir. Each party was allowed to examine all the witnesses they desired.

Q. How long did the hearing of the exceptions last?

A. I think we came up in the forenoon, and were engaged the afternoon and all next morning, until the evening of next day.

Q. And the order was made permanent?

A. Yes sir.

Q. Please state whether or not the proceedings in this case substantially accorded with the practice of your commission or w different?

A. They were in substance according to our usual way of doin business. When a matter of which Mr. Albright had jurisdictio was called to our attention, if it appeared to be urgent, we usuall 'phoned and asked him to come to the office, and if when he ca he did not know, the facts, as he often did not, he would ask f time to investigate the matter, and make a further report, and th was given.

Q. Where was Mr. Albright's personal and official residence that time?

A. In Raleigh, I will state another thing, that we had had som delay in complaints made against the Southern railway, and M H. W. Miller, assistant to first vice-president, had expressed to the fact that Col. Andrews preferred that all matters of complai be made to him, and that he would distribute them, and that h would see that they were promptly attended to. And all other ma ters respecting these car service matters have been since that ti addressed to Col. Andrews, and he sends them out to the proj officers! And when he hears from them he turns the matter ov to us.

Q. In this case you notified Col. Andrews and Mr. Albright too?

A. Yes sir. Col. Andrews came in the office, not about this matte but to bring in answers to some other complaints, and I think th letter had just been received, and after we had gotten throug
239 other matters, Mr. Brown called attention to the letter th had just been received. I think it was the 25th or 26th October. I am not sure. Col. Andrews stated that Mr. Albrig had investigated the matter, and explained it to him. As soon we found out that Mr. Albright had investigated the matter, w called him up over the 'phone, and he was not there, and we sa we would just wait until he came, as he would know all about th facts.

Q. Did Col. Andrews in that conversation ask for further time that you would take no steps in the premises until you saw Mr. A bright?

A. No, he informed us that Mr. Albright had investigated it, an had told him of it, and we just concluded to wait until Mr. Albrig returned.

Q. You understood from Col. Andrews that Mr. Albright had th matter in charge?

A. He investigated it, yes sir.

Q. How often was Mr. Albright in the office, after notice was se to his office, before the order of the 31st was made?

A. I cannot tell you that, or how many times we were in communication with him up to the time that order was made.

Q. Was he in the office more than once?

A. I cannot tell you about that. I know our opinion was that he had not heard from Mr. Ackert, and he was expecting to hear from him.

Q. Did he tell you when he had referred the matter to Washington?

A. No sir, he said he had referred it there, but I do not think he said when it was referred there.

Q. That was in his interview with you on the 29th?

A. I do not remember when he said anything about it. I think he said that the matter had been referred, but I do not know when.

Q. In what interview with you did he make the statement with reference to it.

A. Probably it was that day. It might have been later. I do not know.

240 Q. Before this time, in the practice of your office, had exceptions been filed to orders of this kind?

A. Yes sir.

Q. How often?

A. I do not know. A good many times.

Q. State whether or not it was a practice to hear such matters upon exceptions?

A. Yes sir.

Cross-examined by Mr. NORTHROP:

Q. You have some rules denominated "Rules of Practice of the North Carolina Corporation Commission," have you not?

A. Yes sir.

Q. They are published in the reports of the commission?

A. Yes sir.

Q. Do they prescribe what form complaints shall take, that they shall be numbered and sectioned, etc. do they not?

A. I think they do.

Q. Was the proceeding in this case in conformity with the provisions of these rules?

A. It was not. And we do not conform to them except in formal matters. Complaints were made—they had to be made by letter from their office, and a copy of the letter would be sent to some officer of the railroad company with request to answer.

Stand aside.

241 J. T. SWEATT, witness in behalf of defendant, being duly sworn, doth depose and say:

Examined by Mr. COOKE:

Q. What is your name?
A. J. T. Sweatt.
Q. Are you connected with the W. W. Mills Lumber Co.
A. Not now.
Q. Were you in September and October of last year?
A. Yes sir.
Q. Do you remember when the Greensboro Ice & Coal Co. were building a trestle down there at their yard?
A. Yes sir.
Q. State whether or not the ties and stringers were furnished by your company?
A. Yes sir. We furnished stringers and ties.
Q. What position did you hold with the W. W. Mills Lumber Co.
A. I was manager of the purchasing and sales dept.
Q. At the time of the building of this trestle, did you see a car of ties that came consigned to the W. W. Mills Lumber Co. that was for this trestle, on the lines of the Southern railway, and request it to be placed?
A. Yes sir.

This is objected by the complainant.

Q. How long before that car was placed?
A. I do not know just exactle sir, some 4 or 5 days.
Q. Do you know where it was in the meantime?
A. I know the yard man told me it was on a side track, out near the cemetery, somewhere.
Q. Could the trestle be finished without that lumber?
A. No sir.
Q. Do you recall about the car of stringers also?
A. Yes sir.
Q. Did you see them upon the yard of the Southern railway?
A. Yes sir.
Q. How long after you asked for them to be placed before they were placed?

242 A. The ties and stringers came in there at the same time, two cars loaded together with lumber for this trestle.

Q. Can you state whether or not there was a part of the track of the ice & coal company that was not torn up about that time?
A. There was a spur leading into the yard I think was intact sir. It was not torn up.
Q. Do you remember whether or not during the building of the trestle there were any cars unloaded upon that track?
A. Yes sir.

Q. Whose cars were there?
A. I do not know whose cars were there. I cannot say just now.
Q. Do you know what they were loaded with?
A. There was one car loaded with lumber, and there was one being loaded with the old tank material, or something.
Q. Do you know whether or not the contractor for this trestle was ready and waiting for this material, when you requested it to be placed?
A. He so stated to me, that he was waiting for it.

Objection by complainant, on the ground that it is immaterial and hearsay.

Q. Had he been to you repeatedly, and asked you to hurry the shipment?
A. Yes sir.

Complainant objected, upon the same grounds.

Cross-examiner by Mr. KING:

Q. Do you know at what time the construction of this track commenced?
A. No sir, I do not remember the dates.
Q. Do you know how long it was in course of construction?
A. Well, sir I cannot say exactly. I think though something like two or three weeks, I cannot say positively, as I did not pay any attention to the construction at all, I was simply furnishing material.
Q. Do you even know in what month it commenced and in what month it ended, of your own knowledge?
A. I cannot swear now that I do. I would have to refer to my books and invoices.
243 Q. You have spoken about seeing a car there being loaded with old tank. That was for Mr. Woodruff, was it not?
A. I do not know who is was for. It was the old tank that was standing on the tower.
Q. The old water tower there.
A. Yes sir.
Q. Do you know what month or day in the month that was?
A. I could not say. I know it was during the construction of this trestle, the time that the work was going on.
Q. Were they working inside or outside of the fence at that time?
A. On the inside.
Q. So that was very early after the work of construction commenced, was it not?
A. Yes sir.
Q. State who you saw unloading lumber there?
A. I do not know who the parties were, I simply saw the car of lumber standing in there, and the teams hauling it away. I did not ask any question as to who it belonged to.

Q. Do you remember when that was?

A. I do not remember—I could not name the day.

Q. Is not it a fact that all this was just about the time you were negotiating to furnish this lumber and actually before the work commenced?

A. No sir. It was after the work commenced, as my attention was called more on the scene then than at any other time, as I frequently went around to see how they were getting along, to try to encourage Mr. Morris that the shipment was on the way.

Q. Did you say there was a car placed there for you on that track during this construction?

A. Not on that track, no sir.

Q. Did you ever have a car placed there on that track for you?

A. Yes sir.

Q. When was that.

A. I have had cars placed there prior to the construction of the coal chute and after.

Q. That was with permission of Mr. Pegram, who is brother-in-law of Mr. Mills of your lumber company?

A. Yes sir

244 Q. So then all you know is of cars being placed there during this period of construction, the two just spoken of, one with lumber and the other for this old water tank?

A. Yes sir.

Stand aside.

245 J. C. MORRIS, witness in behalf of defendant being duly sworn doth depose and say:

Examined by Mr. COOKE:

Q. Your name is J. E. Morrison?

A. Yes sir.

Q. Where do you live?

A. In Greensboro.

Q. What is your business?

A. Contractor and builder.

Q. Did you have a contract to build a trestle for the Greensboro Ice & Coal Company?

A. I did commission work.

Q. What part of the work were you to do?

A. All of it except the rails and excavating.

Q. Were you delayed in any way in the building of that trestle?

Objected to as immaterial and irrelevant.

A. The building was delayed some few days on account of the ties.

Q. Where did you get your ties?

A. Bought them from Mr. Sweatt of the W. W. Mills Lumber Company.

Q. How were they brought to Greensboro?

A. I do not know. I never saw them until they were being unloaded.

Q. You do not know whether or not they were brought by the Southern railway?

A. There is no other road comes in here. It came by freight.

Q. Were you ready for the ties when you were pressing Mr. Sweatt?

Objected to.

A. Yes sir.

Q. How long would it have taken you to finish the trestle if you had gotten them on time?

Objected by complainant.

A. From what point.

Q. How long would it have taken to have put the ties on, if you had had ties, how long would it have taken you to have put the ties on and finished it up?

A. 24 hours or 20 hours, or a couple of days, nothing to do but to notch the ties and put them down, and put on the bolts.

246 Q. How long did you have to wait?

A. I cannot say. I suppose we waited three or four days, may be a little bit longer, or less. I do not remember exactly.

Q. Do you remember seeing the part of the side track of the Greensboro Ice & Coal Co. that was not torn up during the building of the trestle?

A. Yes sir.

Q. Did you see any cars loaded or unloaded from that part of the track during the building of the trestle?

A. There were two cars that I remember of seeing, I do not know how many more.

Q. Do you recall whose cars they were?

A. I am not sure. I do not know who the cars belonged to. One was loaded with green pine lumber, and the other was being loaded from the old tank. I understood it was being loaded for Mr. Woodruff. I do not know who the other car belonged to. I was asked if that was one of the cars for the trestle, and I looked at it, and said it was not. That is the reason I remember so distinctly, but who it was for I do not know.

Q. Did you yourself make any effort to get these ties from the railroad company?

Plaintiff objected.

A. I had nothing to do with the railroad company. I was making my application to Mr. Sweatt.

Cross-examined by Mr. KING:

Q. When did you commence to work there?

A. It is mighty hard for me to tell. If I had my time book I could tell from the time I commenced to the day I quit, but I did not know it was wanted and depending entirely upon the books for this information I do not remember. I think some time in October, but I do not know. I have a record of every day and every hour of the work that was done.

Q. So then at this time you are unable to say when you commenced or finished?

A. That is positively. I know positively that it was 1903, and I think it commenced in October, but I could not tell you exactly.

247 Q. How many days or weeks were you engaged there?

A. That is another thing I cannot tell exactly. I judge something like between four and six weeks.

Q. During this period you say you saw two cars in there, those above spoken of?

A. Yes sir.

Stand aside.

248 T. M. BROWN, witness in behalf of defendant, being duly sworn, doth depose and say:

Examined by Mr. COOKE:

Q. Do you remember when the Greensboro Ice & Coal Company was building their trestle.

A. I remember the time but I do not remember the day.

Q. Can you state whether or not there was a part of the track not torn up outside of the yard?

A. Yes sir.

Q. Do you remember at any time during the building of the trestle seeing cars loaded or unloaded there?

A. I helped to load one there that they were at work on.

Q. Whose car was it.

A. It was said to be Mr. Woodruff's. It was that old tank we loaded for him.

Q. How long did it stand there?

A. It stood there a few days. It stood that long. We were about in one day and three parts before we got finished I suppose we stayed about two days.

Cross-examined by Mr. KING:

Q. That is all you know about it?

A. Yes sir.

Q. You do not recollect what month or day in the month it was?

A. No sir, I do not recollect what time. It was the time they were at work, it was while they were constructing the road in the inside of the lot and had that end of the track torn up.

Q. Was there room for another car in there?

A. I do not know.

Q. This car as it stood there, it would not stand of itself, it had to be chocked?

A. I did not look to see whether it was chocked or not. It stood for me to put the stiff on.

Q. Do you remember at that time whether the portion of the track outside of the fence was disturbed or torn up.

A. No sir. I guess not. I did not see no signs of it.

Stand aside.

249 Defendant offers in evidence lease, or agreement in writing between W. D. McAdoo and W. E. Worth, made in 1899. Marked Exhibit "No. 4."

Also old lease which had expired in 1899, from W. D. McAdoo to W. E. Worth, marked Exhibit "No. 5."

The attention of the court is called to the following provision of each of the leases:

"The party of the first part grants unto the party of the second part for the time this lease shall be in operation the right of ingress and egress through the property of the party of the first part and the Oak Hill roller mills, entering in the rear between the Oak Hill roller mills and the Cape Fear and Yadkin Valley railroad."

The defendant contends that the expression "in the rear" here refers to the rear of the lot that is leased to the Greensboro Ice & Coal Company.

Q. E. WORTH recalled.

Examined by Mr. BATTLE:

Q. These leases were made to you?

A. Yes sir.

Q. State what connection, if any, the Greensboro Ice & Coal Company now has with these leases.

A. The Greensboro Coal and Ice Company owned the lease and now control the lease.

Q. And the right that you have under this lease now belong to them?

A. Yes sir. Belong to the Greensboro Ice & Coal Co.

Cross-examined by Mr. KING:

Q. You say that you have transferred all of your interest under this lease to the Greensboro Ice & Coal Company?

A. Yes sir.

Q. Is that in writing?

A. I think it is Mr. King.

Q. Have you it with you?

A. No sir. I have not. I did not bring any papers with me at all. I did not know just what they wanted me for.

250 Redirect:

Q. It was made for the company was it not?

A. At the time the first lease was made I owned it individually but the last lease was made to the Greensboro Ice & Coal Co. That was the intent of the lease. It was renewed for them.

Stand aside.

251 E. C. BEDDINGFIELD, witness in behalf of defendant duly depose and say:

Examined by Mr. BATTLE:

Q. State your name.

A. E. C. Beddingfield.

Q. State your connection with the North Carolina corporation commission and your residence?

A. I am a member of the corporation commission. My residence is in Wake county.

Q. State whether you were present at any time when any person representing the Southern railway, either its officer or attorney, was in the office to see about the matters in dispute in this case?

A. I was present while Mr. Albright came in there in regard to this controversy with the Greensboro Ice & Coal Company, and when Mr. Strong came in after the order was made. It was in the office of the corporation commission in the city of Raleigh.

Q. Do you remember what transpired?

A. Well, I do not remember all. I could not repeat the conversation as it came. Why, we had had the matter up for some days, and we had been waiting for Mr. Albright's return to the city, and we found that he was up here in consultation at that time, making an investigation of facts in this city, and having a conference with Mr. Thompson in regard to the settlement of these demurrage claims, and we also had been to Wilmington to see Mr. Worth. We were aware of that fact also, and when he came back we heard his statement of his side of the controversy as fully as he could put it. I suppose he had all these facts before him.

Q. What reason, if any, did he give why the four cars were not placed on the siding?

A. Because the demurrage which he claimed had accrued on the thirteen original cars had not been paid.

Q. Was there any other reason?

A. There was another reason. He said, perhaps it is practically the same reason, but he expressed a fear that if these four cars were placed that it would result in the railroad company being taken advantage of by shippers in future, that other people might decline to

pay demurrage, and that he did not desire an order of that

252 sort to be passed by the commission for that reason. And that matter was gone over very thoroughly. I remember, though, that very matter was mentioned, and he presented that view

of the case. And I remember also that if such occurrence should appear, that the rule would be so modified as to se- that the corporations were no- defrauded of their rights.

Q. State whether or not he asked for further time?

A. My recollection is that he was expecting—he had written to Mr. Ackert, general manager of the Southern railway, and he was expecting some reply from him. But Mr. Ackert was a very busy man and had many things to look after and it was uncertain when a reply would come from Mr. Ackert. And in the meantime it was very apparent that the business of the Greensboro Ice & Coal Company was being greatly hind-red and damaged by this requisition.

Q. Do you remember how many times he was at the office in reference to these matters?

A. I am not sure, but I think twice.

Q. Before the order?

A. Yes sir.

Q. State whether or not it was before or after the order that Mr. Strong came there?

A. I do not remember whether he came with Mr. Albright or not. I remember Mr. Strong was there once afterwards, but I am not sure whether Mr. Albright was with Mr. Strong at the time that Mr. Strong was talking about this case or not.

Q. Do you remember any conversation between Mr. Strong and any member of the corporation commission before the filing of exceptions?

A. Why, I cannot remember the language. I remember that he came in, and that he and Mr. McNeill were talking about the matter and Mr. Strong seemed to be in some doubt about what the procedure would be. I remember that he raised the question as to whether the case would be heard upon exceptions, and the exceptions
253 overruled or sustained as the case might be, and then the appeal made to the superior or supreme court, as it might be, depending of course as to whether there was any issue about facts or not. And Mr. McNeill turned around and took a volume down that was in the book shelf behind his chair, and he read section seven, I think it is, which goes on to state the method of procedure where rates are fixed. And Mr. Strong, who was evidently quite familiar with the statute, also called Mr. McNeill's attention to section 38, which he read aloud; and there was a clause also in that section which refers to section seven, makes that applicable. But my recollection is that Mr. McNeill did not give any advice one way or the other about what the course to pursue was.

Q. Do you remember whether or not Mr. McNeill objected to the filing of the exceptions?

A. I did not hear any objection on his part. I never have heard any on the part of any member of the commission, or the denial of any legal right to any parties.

Q. Were you present when the exceptions were filed?

A. No sir. They were filed with the clerk.

Q. You were present at the trial here?
A. Yes sir.
Q. In this conversation with Mr. Strong and Mr. Albright, was anything said about notice and complaint in writing or anything of that sort?
A. I do not remember that there was any point of that sort raised
Q. By either Mr. Albright or Mr. Strong?
A. No sir. I do not remember any.
Q. Were you present when Col. Andrews was there?
A. No sir.

Cross-examined by Mr. KING:

Q. The ground of complaint on the part of Mr. Albright was that this Greensboro Ice & Coal Company had not paid demurrage in accordance with the car service rules?
A. Why, the demurrage which had accrued was unquestionably the matter of controversy between the two parties. And the ice & coal company had appealed to the commission to pass upon
254 the question as to whether they were just or unjust charges, and the commission was of opinion that pending that the four cars ought to be placed. Mr. Albright contended, however, that this demurrage which had accrued upon the thirteen original cars ought to be paid regardless of anything before these other four cars were placed.
Q. And he said in their failure they had not complied with the rules of the car service?
A. I think he claimed so.
Q. Are you familiar with the rules of the car service association?
A. No sir. I must confess that I am not. I am familiar with the rules adopted by the corporation commission, but not with the car service rules. Of course, I have read them a few times, but am not familiar with them.

Stand aside.

255 M. W. THOMPSON re-called.

Examined by Mr. JUSTICE:

Q. Are you familiar with the rules of the North Carolina car service association in a general way?
A. I have read over a few sections of the rules.
Q. Are you familiar with rule ten, sections one and three? (witness reads over sections of rules X) You have just inspected these two rules which have been introduced in evidence?
A. Yes sir.
Q. Can you state whether the Southern railway compl-ed with these rules in respect to placing these cars?

Objected to.

A. They did not.

Q. In what respect did they fail to comply?

A. They did not place the cars at the point designated by us, the service that they had previously generally accorded us and accorded to all shippers I know, the right to designate where the cars will be placed and having the car placed at that point.

Q. I refer to the four cars subject to the commission's order and you so understand me?

A. I was understanding the other way, but the answer is applicable to that question too.

Q. So they did not comply with these rules in placing any of those cars, the thirteen or the four?

Objected to as immaterial and irrelevant.

A. No sir they did not.

Q. The rules to which I have referred provide that cars shall be placed on private sidings for delivery of car loads of freight unless the tracks are filled with other cars at the time demand is made by the shipper for placing the cars. At this time was the side track of the Greensboro Ice & Coal Co. filled with other cars? With reference to any of the cars?

A. With reference to the original thirteen the place where we designated them to be placed was empty most of the time, except as I stated in my previous testimony, when there were other cars placed there. In reference to the four I will state that the chute
256 where we designated these four cars to be placed was empty waiting for them to be unloaded.

So much of the foregoing answer as relates to the thirteen cars objected to, and motion to strike out.

Q. State what the rights of the railroad company were with reference to going on this siding of the Greensboro Ice & Coal Company for the purpose of moving cars?

Objection to form of question and the question itself.

Q. And what was it at the time you were demanding these cars to be placed?

A. They have always used the track so far as I can see for placing cars and passenger cars of their own. I have seen one passenger car on that track, and freight cars in there generally.

Q. Was there ever any claim by the ice & coal company or any of its officers of any right to hold cars placed there by the railroad company except for the purpose of unloading?

A. No sir.

Q. Did the ice & coal company claim any such right?

A. No sir.

Q. Did you ever individually assert any such right?

A. No sir.

Cross-examined by Mr. KING:

Q. Where abouts were the cars including the passenger car to which you refer standing when you saw them standing there?

A. Generally they were outside of the yard. I have seen them standing there for loading and some of them extending on to our premises inside of the fence line.

Q. Standing there for any considerable length of time or only temporarily?

A. Temporarily. When they were making shifts for their convenience.

Q. In shifting there occasionally, in running cars there, the part that they were running on to the switch projects sufficiently long to go down into your yard, and they were pulled out immediately, is that not so?

A. I have seen cars standing there, left there by the engine,
257 the engine gone away and left them standing there.

Q. It would be for a very short time, would it not?

A. I have seen cars standing there for 24 hours.

Q. You have seen cars standing in your yard and not carried there for your convenience 24 hours?

A. I have seen cars standing partly in our yard for a considerable length of time.

Q. Fix the time.

A. I could not do it.

Q. Do you mean by a considerable length of time a half a day or less.

A. Probably as much as half a day. The track is used to make quite a number of shifts, and usually the cars would stand there for some time.

Q. As a matter of fact, before this change the grade was down from the siding into your yard?

A. The grade was down from the main line.

Q. And to leave a car there brakes had to be put on the wheels, or chock them?

A. At some point of the track.

Q. Is it not a fact as the track now stands, that part of it is on land belonging to the Guilford roller mills?

A. A very small corner, probably 20 or 30 square feet of it.

Q. In other words, the southwest corner of the lot of the Guilford roller mills extends sufficiently far south as to cover both the tracks. Is it not so?

A. The corner post is about two inches from the far rail.

Q. Leaving both rails upon the roller mill property?

A. At that point, yes sir. But the other end of the Cape Fear & Yadkin Valley, on which the right of way is established, the entire piece of the Southern track would not be on the ground of the roller mill.

Q. So that in getting on your ground it is necessary, after leaving

the right of way, to pass over the Guilford roller mill property, and some property belonging to Mr. McAdoo, not controlled by you.

A. Not owned by us, but we have a right of way into the yard which goes along side of that track.

258 Q. When you say right of way, you mean for vehicles, do you not?

A. Yes sir.

Q. And there is a right of way passing north of this track several feet?

A. Yes sir.

Q. And enters your gate at a point where you have had a gate ever since you have been connected with the property?

A. The gate has been changed.

Q. Substantially?

A. Yes sir. The track there in its present location is in full accord with the Guilford roller mill and Mr. McAdoo, whose property is traversed.

Q. Have you any control of the Guilford roller mill property?

A. Virtually.

Q. Did you not hear Mr. Pegram say here on a previous trial that it was a nuisance to have cars unloaded there?

A. He said that, yes sir.

Q. You have had him here as a witness, have you?

A. Yes sir I would like to state here that has no reference to my other answer, because we moved the track partly at his request, on the present location.

Q. You were getting it further away from him that it was heretofore?

A. Yes sir.

Q. You say you had no writing between him and you about this matter?

A. There is no ground upon which we could make writing.

Q. Answer my question directly.

A. The track as it was previously located was within a certain distance from the mill. Located as it is now, it is further away. He wanted the room there in order that his teams that hauled supplies for his mill could turn around.

Q. Will you please answer my last question?

A. We have no writing.

Q. Have you any contract at all with him?

A. We have no contract.

259 Q. Have you any contract with Mr. McAdoo for that ground outside of the fence other than that which may be affected by this lease that you have introduced?

A. We have no contract with Mr. McAdoo.

Redirect:

Q. You say you have with Mr. Pegram an understanding, and that it is agreeable with him for you to have this track on his ground?

A. I have seen both Mr. Pegram and Mr. McAdoo and this change is agreeable to both of them.

Q. You spoke of the Guilford roller mill. Is that the Oak Hill roller mill?

A. No sir, it is not.

Recross:

Q. It is agreed that where the word Guilford roller mill" has been used, it means that Oak Hill roller mill.

A. No sir, it does not. That is an entirely different property.

Q. Who owns that land there in front of the roller mill?

A. The Guilford roller mill, as I understand.

Q. Where are the Oak Hill roller mills located?

A. That is the building now occupied by the Armour Packing Company.

Q. Is it necessary to cross their property in going into your property?

A. No sir, it is not necessary for the train to pass across their property.

Q. Do they pass over this property?

A. There is no such property at the present time. You are misunderstanding what the Oak Hill roller mill and the Guilford roller mill property is.

Q. Is there such a thing as the Oak Hill roller mill property?

A. There is a building occupied by the Armour Packing Co. which possibly the old inhabitants might speak of as the Oak Hill roller mill property.

Q. Is it necessary to pass over this property for this railroad track to get into your ground?

A. No sir.

Q. Does this track pass over it?

A. No sir.

Q. It is a fact that it passes over the Guilford roller mill property?

A. Yes sir.

260 Redirect:

Q. From whom did the Guilford Roller Mill Co. get that property?

A. I do not know.

Q. Is it part of the McAdoo property.

A. I think it is a little piece, but the lease granted us ingress and egress through the property.

Objected to.

Q. Mr. King asked you about Mr. Pegram awhile ago, if he did not say it was a nuisance to have cars unloaded there at this side track. Where is Mr. Pegram now?

A. He is up on the C. F. road somewhere. He expected to be on the 12 o'clock train, to-day, but he did not come in.

Q. What has Mr. Pegram to do with any of this land?
A. He is secretary & treasurer of the Guilford roller mills.
Q. I ask you if this is not what Mr. Pegram said in his testimony here. (reads) By Mr. COOKE: Q. I ask you if it is not a public way for people who travel? A. Yes sir. There is a provision in our deed for people to come in there." Do you remember that.
A. Yes sir.
Q. "While unloading cars? A. Yes sir, it is not specified so. We have allowed cars to be unloaded there from the fact that it is an accommodation, but it is frequently a nuisance. They soon make it a public unloading place at our expense." Is that what he testified?
A. I believe it is.
Q. The placing of a side track into the Greensboro Ice & Coal Company's lot as it now is, was done with the knowledge and assent of the Guilford roller mills, was not it?

Objected to.

Q. Yes sir, not only with their consent but by their desire.
Q. Have they evinced any desire that you cease to use it as it now is?
A. No sir. They have not. They use it themselves.
Q. Which is the front and which is the rear side of your fence?
A. The Southern Railway side is considered the front side.
261 Q. Where is that, with respect to the Cape Fear & Yadkin Valley railroad?
A. We are between the two railroads.
Q. Which is the rear side?
A. The rear side was that towards the C. F. & Y. V. railroad.
Q. Where the switch comes in.
A. The spur would be towards the rear of the lot.
Q. The spur comes in on the rear of the lot?
A. Yes sir.
Q. The rear of the lot is the gate, as I understand?
A. Yes sir.
Q. This demurrage that was claimed by the railroad company to have accrued on account of those thirteen cars, were those cars requested by you to be placed on this portion of your side track which was not torn up?

Complainant objected, as irrelevant.

A. I asked Mr. Alley to place these cars on the piece of track, and I was standing right close at the track when I told him about it.
Q. At that time could more than one car have been accommodated?
A. Yes sir. It could have held two cars. My testimony shows that at one time they placed two cars on that piece of track, outside of the gate.
Q. Did these cars arrive there on different dates?
A. Scattered along on different days.

Q. Suppose they had placed them in the way they ordinarily d at the point where you requested, would you have been able to unlo the cars within the free time, so that no demurrage would ha accrued at all?

Objected to as irrelevant and immaterial.

A. Yes sir.

Cross-examined (subject to exceptions, accompanied by m tion to strike out, by complainant):

Q. Do you know any particular day on which any particul car arrived, *on* your own knowledge?

A. No sir, not of my own knowledge. We have a record of a the cars.

Q. Do you know how many of your cars arrived on a
262 given day?

A. No sir.

Q. Then, as a matter of fact, you do not know as to the dates these arrivals?

A. I know from the records.

Q. And not otherwise?

A. I know the given dates without those records.

Q. I believe you stated a while ago that the cars could have bee left there with safety, without having brakes put on, or any chock- is not that so?

A. Before the trestle was built, no sir. We can have the ca almost at any point in our yard without putting brakes there chocking.

Q. We were talking about outside of your fence, is not it a fa when they stood on there, that they would not stand unless chock or brakes put on?

A. I believe they usually put brakes on outside of the yard, a though the grade there was slight.

Q. Have you measured the distance between your fence and point where it would be entirely safe to leave cars standing, as re gard the main line—what they call the safety post?

A. I know it is more than two car lengths.

Q. Have you measured the distance, or stepped it?

A. I have not measured the distance exactly, but I have seen th Southern railway put two cars there and let them stand there, and judge they knew at what point to leave them.

Q. Do you know how long they were allowed to stand there?

A. I could not tell exactly the length of time. It was seven hours, over night.

Q. During this occasion?

A. Yes sir.

By Mr. NORTHROP:

Q. You say you asked Mr. Alley to place these cars. Did you ask him to place the 13 of them?

A. I did not go to them on the arrival of each car. It is a standing order as to the disposition of our cars, which I gave him immediately when we started upon the work of this trestle.

Q. Was it given in writing?

263 A. We very seldom give any designation for cars in writing. He has charge of the matter, and he comes to see us personally.

Q. What was the date when you gave him the standing order?

A. I do not know. It was previous to the arrival of the cars. The first cars came in there about the time of the beginning of the trestle.

Q. What time was that?

A. That was along in the early part of September, 1903.

Q. Cannot you fix the time with some degree of accuracy?

A. About the 8th or 9th, possibly, of September. I could not tell you the exact day.

Q. That is the time you commenced work?

A. That is about the time we began the construction of the trestle.

Q. Inside or outside of the fence?

A. We did not construct any trestle outside of the fence.

Q. You say you went to Mr. Alley personally, and left standing orders with him, about the 8th or 9th of Sept., to deliver cars to you on that part of the track outside of your fence and between the fence and the right of way of the C. F. and Y. V. railroad?

A. As I recollect, he came to me to see what we wanted done with our cars, and I told him there was a piece of track we would leave out there, and not tear out, and that he could place the cars there.

Q. Did you ever tell anybody else, or was he the only man that you spoke to?

A. He was the only railroad official I saw in reference to it. I spoke to Mr. Hicks, to go and see about these cars.

Q. He was the only railroad man?

A. Yes sir.

Q. Was that the only occasion?

A. So far as I recollect, it was? He is the only one with whom we have our dealings as a rule.

Q. Did you ever go to him again?

A. I do not remember.

Redirect:

Q. If Mr. Hicks saw any of these railroad officials state whether or not it was done under your directions as manager of the

264 Greensboro Ice & Coal Company?

A. It was partly so, and partly on his own account. He has charge of the engineering part of the establishment, and he was

running short of fuel, and he went out partly on his own account. We had been trying to scrape up about the place stuff to keep going. These cars were loaded with just what we wanted for the boilers, and he went out himself several times, and spoke to him about them.

Stand aside.

Defendant closed.

265 Mr. ELLIS recalled.

Examined by Mr. KING:

Q. You are the same Ellis who has been previously examined?
A. Yes sir.
Q. Have you in your hand a record, or partial record, of the cars on the tracks and sidings in Greensboro, for the month or part of the month of September, 1903.
A. I have.
Q. Have you heard the different witnesses testify as to the presence of a car on this spur track of which we have been speaking, placed for Mr. Woodruff, and on which the old water tank was to be *located*?
A. Yes sir.
Q. Have you taken any record of that car?
A. Yes sir.
Q. Please state what your records disclose as to the placing of that car, and the name and number of the car, and the date if its removal?
A. This record was taken on the morning of Sept. 9th, showing the ice house track, that is just outside.
Q. That ice house track, that portion of the track in controversy outside of the fence of the Greensboro Ice & Coal Co.?
A. We know the whole thing as the ice house track, I mean the part outside of the fence. It reads as follows: "W. of A. (Western of Alabama) 1702. I have it that day as an empty flat. On the morning of the 10th, I have a record of the same car in the same place, loading it with the material of the tower. The next day it stands at the same place, that is, the 11th, and it is billed for Mt. Airy. That is the last record I have of that car on that spur track.
Q. Is it so marked "Mt. Airy" on your record.
A. Yes sir.
Q. Is that the residence of Mr. Woodruff, for whom it was placed?
A. Yes sir. That is where he lives—Mt. Airy, N. C.
Q. When did you say it was moved out from there?
A. It was moved out from there between the 11th and the morning of the 12th. My record of the morning of the 12th shows
266 placed on this same place, that a flat car was standing A. C. L. standing in exactle the same place, from which Mr. Woodruff's car had been moved out, and in lieu of it I find A. C. L. No. 22404, that was loaded with lumber for Mr. Townsent.

Q. Is that the car spoken of by the different witnesses who have testified concerning a car placed there for Mr. Townsend?

A. I suppose it is. That is the only record I have of any car there.

Q. State the subsequent movements of that car?

A. The next record I have was on the morning of the 14th, that was Monday morning. We do not check the yard on Sunday, which was the 13th. I have a record of A. C. L. No. 22404 standing in the coach shed track. That is the same car with lumber. The unloading was not finished at this point on the ice house track, and the car was ordered away, for some reason or other.

Q. So then it was partially unloaded while standing on the ice house track, and before the completion was moved away.

A. They had one day's work unloading cars on the ice house track and siding. Then on Monday morning, the record of this car shows it standing in the coach shed, partially unloaded. The coach shed track is not a team track, and it could not be unloaded from there, but it was later ordered on the oil house track, which is a team track, and was released on the 18th.

Q. Do you know why it was ordered out before its unloading was completed?

A. Well, I cannot say that I do know why it was ordered out, because I do not know anything about its being ordered out. I just keep a record of the cars where they are.

Q. When does your record next disclose the placing of cars on this track, and for whom were they intended?

A. The next record I have of cars on the ice house track was September 29th.

67 Q. Please give the initials and numbers of the cars placed there for the Greensboro Ice & Coal Co.?

A. A. C. L. 18,782, for the Greensboro Ice & Coal Co. standing on the track on the morning of the 29th of Sept., about noon. That is the ice house track. The chute had been completed, and these cars had been placed on the completed chute for unloading on the 29th of September.

Q. Had this track been completed so as to take cars over the chute at that time?

A. Yes sir.

Q. Proceed with the initials and numbers.

A. A. C. L. 9812, N. & W. 11440, Southern, 42543, S. F. & W. 07, A. C. L. 20,724, N. & W. 12,172. These cars were all loaded and filled, some with wood and some with coal, for the Greensboro & Coal Company.

Q. And on the same day?

A. They were all standing on that track on the day of September th. This was after the completion of the trestle.

Q. Did you have occasion to observe the condition of the track at s point, between, say, the 14th and 29th of September?

A. Yes sir. I came along these every day to take a list of the different tracks, every day, except Sunday.

Q. Proceed and state what was the condition?

A. Well, the condition of this track would not admit of cars being placed on it. There were no cars on this track from the 14th to the 29th.

Q. Can you say why?

A. Why, the track was torn up, I suppose. It was during the time of the construction of that chute.

Q. During this period was it possible in your opinion to place cars on that spur track with safety?

A. I should say not.

Q. Did Bob Gorrell just about this time establish a beer distributing point here?

A. I think so, yes sir.

Q. During this period of construction, do you recall the fact that he or his representative applied for the placing of a beer car or car loaded with beer, on this spur track? If yes, what was done in regard to it.

A. He received a car of beer on the 19th. Of course he
268 wanted it unloaded from there as he had done before, but the condition of the track over there would not admit of the car being placed there, so he unloaded it from the eating house track, on the 19th. I have a record of the car standing on the eating house track on the 19th. "E. R. L. 616, received on the 19th for R. P. Gorrell."

Counsel for complainant here stated in connection with this testimony, and subsequent testimony, that it was introduced to establish the condition of the track, and not for any other purpose.

Cross-examined by Mr. JUSTICE:

Q. What period of time does the book you have cover?

A. This book I have commenced on the 9th of September and closed on October 2nd.

Q. When was work on that track of the Greensboro Ice & Coal Co commenced, if you know?

A. I do not know.

Q. Can you give about the date?

A. I do not know that I can. About the 1st of September, I think.

Q. Mr. King, in asking the question, assumed awhile ago it was the 14th.

A. That presumption was about the track on the outside of the gate, I suppose.

Q. What is the last date that your record shows a car was placed for the Greensboro Ice & Coal Co. prior to the 29th of September 1903, when the track was completed, as you say?

A. This book does not show any car placed for them prior to the 29th.

Q. So from the 9th to the 29th of September, that book does not show any car was placed for the ice & coal Co. anywhere?

A. Yes sir. It shows cars standing on the side track for them.

Q. I want to know what cars of the Greensboro Ice & Coal Co. are shown by that book to have been placed anywhere, from the 9th to the 19th of September?

A. On September 18th, coach shed track contains the following cars; for the Greensboro Ice & Coal Co. A. C. L. 21625, wood, for the Greensboro Ice & Coal Company. N. & W., 46826, coal, for the Greensboro Ice & Coal Company. These cars were on the coach shed track.

Q. Take some other day.

A. On the 19th of September, coach shed track contained A. C. L. 21625, same car in the same place. N. & W. 46826, same car, coal for the ice & coal Co. Same day on the Tate Warehouse track, that is the track right on the other side of the main line of the Cape Fear & Yadkin Valley, opposit- the Greensboro Ice & Coal Co.'s wood yard. Southern, 44,960, Southern, 42,543, S. F. & W., 8707, A. C. L. 20,724. N. & W., 2172. This is the Greensboro Lumber Company's track. This car was standing right by the fence of the Greensboro Ice & Coal Company's, just outside of the fence, on the Greensboro Lumber Company's track, on the south side of the lot of the ice & coal company. The Greensboro Ice & Coal Co. unloaded wood from this track very frequently. They very often threw wood right over the fence from this track. This was a nearer way to deposit wood than their own track is. N. & W., 1818, that is the only car on that track for that day. I give you the record of these cars every day. They just stayed on the track, and you could not place them on the other track because it was torn up.

Q. What does that record profess to disclose, the location of every car on the yard during the days that it covers?

A. Yes sir. It professes to disclose the cars, the track that they are standing on, what they are loaded with, and who they are for, also the consignee is.

Q. It shows then, the location of each of those cars, whatever the condition of the cars may be, does it not?

A. Yes sir.

Q. Many of them are so situated that they could not be unloaded in the place where you have a record of their standing?

A. Yes sir.

Q. Then I misunderstood what your record was, when I asked you a question awhile ago, if you could state from that record what cars were placed for the ice & coal company. Now, I want you to tell me whether you have a record at all which indicates when cars are placed at a point accessible for unloading, for the purpose of being unloaded. Do you keep such a record that?

A. No sir, I do not.

Q. Does anyone keep that record?

A. I think so. I think that is the agent's record.

Q. There is, then, such a record as that kept?

A. I do not know that there is, but I suppose there is. I suppose car service men keep that record.

Q. I thought when I began to examine you that that was record you had. But I am mistaken about that.

A. That is right.

Q. You said that that portion of the Greensboro Ice & Coal Co pany's track which was on the outside of their present fence w not in such a condition that it could be used for placing cars the purpose of being unloaded during the time they were at wo on that trestle, did you?

A. During that period of time, I have no record of cars on th track whatever.

Q. But, as a matter of fact, did the portion of the track outsi of the Greensboro Ice & Coal Company's track remain in the sam condition it was in when Mr. Townsend's car was placed there, unt up to the day before the track and trestle of the ice & coal Co. wa ready for use?

A. My understanding is that the track was spiked down after th 14th, and could not have been used for any cars after the day th Mr. Townsend's car was taken out. My understanding about th matter is that they ordered the car out, because they wanted to tak that track up, and it was immediately ordered spiked down, so th engines could not go in there at all.

Q. Do you make that as your understanding, or have you any knowledge?

A. I have no knowledge. That is simply my understanding.

Q. You do not undertake to say that it was spiked down, and remained spiked down 24 hours?

A. Not from my own personal knowledge I do not.

271 Q. And what you say about the track's not being in a condition to use, you are not speaking from your knowledge but merely from an understanding.

A. The track could not be used if the switch was spiked down.

Q. You do not know that it was spiked down, nor do you know that for any other reason it could not be used, of your own knowledge?

A. Yes sir I do. But I could not give you the dates, or anything about that. I remember in passing there every day, seeing it, some time during the time that the track was jacked up, and nothing in it whatever.

Q. You do not know the date of that?

A. It was during the time of this work.

Q. How far out towards the main line of the C. F. & Y. V. was it jacked up in that way?

A. It was almost to the main line.

Q. Do not you know the fact that it remained in its original position between the fence and the C. F. road until the dirt was filled in, on the south of the original place of the track, and then it was raised and moved over on that fill which leads to the trestle, shortly before the trestle was used for placing cars?

A. I think the track was jacked up and moved, over and the dirt was shoveled up under the track.

Q. Do you swear it was done that way?

A. No sir, I did not see it.

Q. Then you do not know the fact to be different from what I have stated in my question?

A. No sir.

Q. Can you get a record that shows the placing of cars during the time that this trestle was being constructed, the placing of cars for the purpose of being unloaded?

A. No sir, I do not know that I can. These records are the agent's.

Q. Cannot you have access to those records?

A. I suppose so.

Q. Will you endeavor to get them, and give me any information you can about these 14 cars upon which demurrage was charged, inform me whether any of these were placed for being un-
272 loaded during that period?

A. That would require some time to do. That would be out of my line entirely.

Q. Who would be the proper man to apply to for that information?

A. I could not tell you, the records are in the agent's office.

Q. Who is the man employed by the Southern railway who has charge of them?

A. Mr. Alley is the car service man.

Q. What day do you know the last car to have been placed on this siding of the Greensboro Ice & Coal Co. before it was finished?

A. The night of the 11th of September was the last car that I have any record of being on that siding, until his own cars were placed on the chute for unloading.

Q. Can you tell me when car S. F. & W. 8,707 and car A. C. L. 20,724 were placed and unloaded?

A. S. F. & W. 8707, on the morning of September 29th, was standing on his chute, containing wood. It was unloaded during that day, that is, there is no record of its being there next morning. A. C. L. 20724, that car was standing at the same time, same place.

Q. When were these cars received at Greensboro?

A. I have it on this book here, received here the 9th.

Q. No, can you tell me if the Greensboro Ice & Coal Co. had given to the Southern Ry. general instructions to place their cars on their siding, why these two cars which were received on the 9th were not placed on that siding, in view of the fact that you could place a car for Mr. Townsend on the same siding on the 11th?

A. If they had given that order, there was no reason why it should not have been done.

Redirect:

Q. The standing order to which the reference has been made was to place the cars where—that is to say, within their yard or without their yard?

A. Within their yard.

Q. According to your record, that spur track outside of the fen was occupied from the 9th to the 14th with either the Woodruff the Townsend cars?

A. Yes sir.

Q. What was the condition of the track inside of the fenc
273 at that time?

A. The track was torn up inside of the fence at that tim

A. The track was torn up inside of the fence at that time.

Stand aside.

274 Mr. ALLEY recalled.

Examined by Mr. KING:

Q. You are the same Mr. Alley who has been examined, previously are you?

A. Yes sir.

Q. Please state if you ever had any conversation with Mr. Thompson as to the placing of any of these cars on his spur track, and if yes, when, where were you and what was said?

A. I passed the trestle just before it was completed, before the stringers were placed on it, and Mr. Thompson and Mr. Morris were on top, and Mr. Townsend *say* to me, "I have told you all to place two cars there"—looking downward—referring to that little spur track outside of the fence. I went on down this trestle to this embankment, and went over and saw Mr. Jackson, and told him what Mr. Thompson said. And Mr. Jackson said "That switch is spiked down," which means that it is spiked this way, so you cannot open the switch. In consequence of that I told Mr. Thompson that track was spiked down, and I went about my business.

Q. When a switch is spiked down, is it possible to put cars there or for an engine to go on the switch?

A. No sir, not unless he pulls the spikes.

Q. State whether or not you ever had any other conversation with Mr. Thompson, or any other one connected with the Greensboro Ice & Coal Company, during this period of construction, about placing cars on this track?

A. No, sir. I have no recollections of ever having any instructions from Mr. Thompson or anyone else to place any cars on this spur track, or anywheres else.

Cross-examined by Mr. JUSTICE:

Q. When that spur track was in condition before this work was begun on it, where di- you place cars consigned to the Greens-
275 boro Ice & Coal Company for the purpose of unloading?

A. That was before the work commenced in his yard, we put them on the ext-eme west end and the coal we unloaded on the east end, some coal on the Southern side. And the wood for his wood

yard was unloaded on the Greensboro Lumber Co. siding on the south side of his fence.

Q. Then all the carloads of coal were unloaded from this track that led into the Greensboro Ice & Coal Company's yard?

A. Yes sir. There was some nut and egg coal that was unloaded on the Southern side, next to the passenger depot, and there was also some unloaded on the C. F. & Y. V. siding.

Q. What per cent. of the cars were unloaded in the ice & coal company's yard, from these cars?

A. I have not the slightest idea.

Q. The greater part of it.

A. Oh, yes.

Q. You had general instructions to place his cars there?

A. Yes sir, we had standing orders to that effect, prior to the tearing up of that track.

Q. They were never revoked?

A. No sir, not that I know of.

Q. Who keeps a record of the placing of cars for the purpose of unloading.

A. I keep a record of all cars placed, when they are placed for being unloaded. You see in car service we charge you for the time they are in use.

Q. I am asking about when they are actually placed.

A. The actual placing of these cars is in that report there.

Q. For the purpose of unloading?

A. Yes sir, the actual placing of the 14 cars, that stood on the side track—I kept no record of that. I suppose it is in Mr. Ellis' book.

Q. But when the cars were actually placed for the purpose of being unloaded, you did keep a record of it?

A. Yes sir, when he gave the order for them to go on his chute after it was completed, then I did.

Q. Or when you placed cars on a public team track for him, for it to be unloaded according to his orders, then you made a record
276 of it?

A. Yes sir.

Q. There is no such record made of these 14 cars during the time his trestle was being completed?

A. I do not think he ever gave an order for them.

Q. And you never made a record of placing these cars for being unloaded?

A. No sir.

Q. His general order was to place them on a spur track leading into the Greensboro Ice & Coal Co. yard?

A. On the piece of track.

Q. And there was no revocation of his order?

A. None that I know of.

Q. Do you know the fact that there were cars placed on this portion of the Ice & Coal company's private siding which lies between the C. F. & Y. V. railroad and the fence of the Ice & Coal Company?

A. No sir. There were no cars placed there, only the T and the Woodruff cars.

Q. There were two cars?

A. Yes sir. That was prior to the disturbing of the track.

Q. Did not the track remain in the very same condi portion of the track outside of the fence and between the f the C. F. & Y. V. railroad remain in the very same condi just prior to the time that the trestle was completed?

A. No sir, to the best of my belief, the original road bed about the guide post and further west. It was thrown u improvised grade, and there it remained until the completio was outside of the fence.

Q. What do you mean by the guide post?

A. The clearance post.

Q. You say to the best of your belief, this track was c

A. That is my belief.

Q. Do you know?

A. I never went there and examined it thoroughly, but it in that condition.

Q. Did not you see it in that condition after it was move which was immediately before the track was completed?

A. I saw it immediately before too, and I saw it immed after.

277 Q. You spoke of the track being spiked—do you kno many spikes were driven in it?

A. I could not say, I saw it spiked down.

Q. How many spikes are usual?

A. One would be sufficient.

Q. It is a very easy matter to draw a spike?

A. No sir, not unless you have the regular bar.

Q. Take a regular railroad bar, you could draw it about as as you could a nail?

A. Sometimes they are right hard to draw.

Q. How long would it take you to draw it with the imple used for that purpose?

A. Get a good strong man, he could pull it out in about jerks.

Q. You did not know that track was spiked down except thr Mr. Jackson?

A. No sir.

Q. Where is Mr. Jackson?

A. He is in court.

Redirect:

Q. When you say that prior to the commencement of that w Mr. Thompson had a standing order to place cars, did he have order to place cars on this portion of that spur track outside of fence?

A. No sir.

Q. When you say you had a standing order, that means to carry them over in his fence, or to put them on the north side next to the Southern depot, or south of his fence?

A. Yes sir, on the south side, where he could throw it over his fence.

Q. What would be the fate of an employee who would go and draw a spike where a switch had been spiked down, without an order from the proper authorities?

A. He would lose his job.

Stand aside.

278 H. W. CLENDENNIN, witness in behalf of complainant, being duly sworn doth depose and say:

Examined by Mr. KING:

Q. What is your position?

A. General clerk of the yard master of the Southern railway, at Greensboro.

Q. Do you remember the period of the construction or change of this spur track of which we have been speaking?

A. Yes sir.

Q. Please state to the court what you saw, in point of the condition of this track, and when and under what circumstances your attention was attracted to it?

A. I was called on to have a car pulled off, that was on Monday morning, the 14th. That was the Townsend car, the 14th of September. I do not remember who requested the removal.

Q. Why?

A. To repair the track, or to work on the track.

Q. State if that was done?

A. I went over to see Mr. Jackson the yard conductor on that side, personally, and told him to pull it off, and to move the car over to another track. And then I went to see Mr. Alley, to ask him to go to Mr. Townsend and ask him where he wanted the car placed so he could unload the balance of the lumber. The next thing in my mind is the car of beer for Robert Gorrell, on Sept. 19th, at 2 p. m. His representative came to me looking for that car, and I went out on the yard to look for it to have it placed. We found it over on the A. & Y. yard, way down near the depot. We asked Mr. Jackson if he would place it on this little spur track, or the Guilford roller mill, and he said he could not, that it was spiked down. The representative of Mr. Gorrell was with me at that time, when I told him I would run on up there and see if I could make any arrangement to have his car placed. I went on up to this little spur track, from the Guilford roller mill. My object was to see if there was room, and if so, I would make arrangements to have the spike drawn, to get the car in there. It was perishable freight, and I wanted to
279 get it in place. And I saw when I reached there that it was impossible to get the car in there. That the track was out

and attached to the rails—they had sills or blocks at the end of t and the cross ties were attached to the rails, and you could see und the track, and I suppose a man could walk under it. That was on side of the gate. I could see there was no possible chance to get th car in there if I had the spikes drawn, as it was my intention to d if there was room.

Q. In consequence of conditions existing there on the 19th wha disposition was made of that beer car, for the accommodation of Mr Gorrell.

A. After leaving the man, I told him if I could not arrange t get it in there, I would place it somewhere and notify him. And I placed it, and put it back on the southern side, and it was placed on a team track, and I went and notified him.

Defendant here submits that a great deal of this is incompetent.

Q. Have you any other knowledge about this matter, or the history of these cars during this period of construction there?

A. Yes sir. During this time, I remember seeing one car standing there, down on this Greensboro lumber track, right at the fence at the southern side of the Greensboro Ice & Coal Co. place. I remember seeing a car for several days standing in that position. I did not know what was in the car, but it was marked "Greensboro Ice & Coal Co."

Q. How many days did it stand there?

A. Several days. I noticed the car several times in passing.

Q. How near did that track run to the fence of the ice & coal Co at that particular point?

A. It is right near the fence. There is hardly room for a man to pass between the fence and the car.

280 Q. Do you know of the history of any of those other cars?

A. Yes sir. I never noticed the numbers, but I remember seeing them standing on the Tate Warehouse track during this time and then down on the coach house track. They accumulated on us and we would have been glad to have placed them.

Q. Do you remember definitely as to the condition of this track for some days prior to the 19th of Sept?

A. I know that they were working on it.

Q. Have you any other definite information as to its condition, of your own knowledge?

A. I just know they were working on the track.

Q. On the 19th, was it possible to have placed a single car on that spur track with safety?

A. No sir.

Cross-examined by Mr. JUSTICE:

Q. From the 19th to what day was it that you could not place a car on that spur track?

A. To the last of September.

Q. I ask you if you know who put that spike in there?

A. No sir, I do not.

Q. I ask you if you have not heard that Mr. Hicks, one of the employees of the Greensboro Ice & Coal Co. put it in there, and that the railroad company had it taken out, and that cars were placed in there inside of two days from the time the spike was driven in?

A. I never heard of it.

Q. Do you say it is not so.

A. No sir. This is the first I ever heard of it.

Stand aside.

281 J. H. MEDEARIS, witness in behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. KING:

Q. What was your business during the months of September and October, 1903?

A. I was supervisor of the track.

Q. For what company?

A. For the Southern Railway Company, over there in my division.

Q. How long had you held that position prior thereto?

A. I was made supervisor in August preceding.

Q. What had been your position prior to that?

A. I have been in the company ever since 1881. I helped lay a great deal of the track, and have been on the section 3 or 4 years.

Q. Was this main line and this spur track spoken of within your jurisdiction?

A. Yes sir.

Q. State to the court if you remember the period of construction or change in this spur track?

A. I do not remember exactly, but the track was unsafe about two weeks, to the best of my knowledge, out side of the gate.

Q. Do you remember when it was restored, so that cars could be and were put in there?

A. I remember the time, but I do not remember the date.

Q. About what period?

A. Somewhere along towards the last of Sept. but I do not remember the day.

Q. Under whose supervision was the iron replaced and fastened to this spur track, as reconstructed or repaired?

A. When it was replaced, I suppose they put it back, but the railroad company looked after it to see that it was put back right—the section foreman.

Q. Were you notified with anyone connected with the ice & coal company of the purpose to repair this track, and if so, about
282 when, and what did you do with reference to making it safe to work there.

A. I sent the section foreman there to have it fixed up safely when it was ready.

Q. Do you remember about what time it was?

A. It was towards the latter part of September, but I do not recollect the date. I did not take any notice of the date.

Q. Was it you ordered the spiking of this switch.

A. Yes sir. I was not the man that done it, I had it spiked.

Q. Who did it?

A. I directed the section foreman, Mr. Fogleman, to have it done. I suppose one of his hands did it. I do not know who did it.

Q. Why was this spike put in there?

A. After I saw the track was jacked up and unsafe, I had it put in there to keep the men from undertaking to push cars in there. The track was not safe to use, and I kept it spiked up until the track was fixed all right, and then I had the spike taken out.

Q. Did you receive notice that changes were to be made in this spur track, from the Greensboro Ice & Coal Company?

A. Yes sir. A man came to me and told me he was ready to tear up the track, it was a slim fellow, I do not know his name. He is a man that worked around the yard. He sent for me to go down there, and I went, and he said that he was ready to go to work.

Q. That was from the 10th to the 15th?

A. Along in there somewhere. I do not remember the dates.

Q. In consequence of this information, you ordered the spike to be put down as you testified?

A. Yes sir. As soon as I saw the track was unsafe, I had the switch spiked down. I did not have any more to do with the work from the time I told him to go ahead, and tear it out, until he was ready to lay the rails back, and then I sent the section foreman there to see that it was done right, for the company.

283 Q. Was this spur track, from the time they commenced there, outside of your supervision, and within the supervision of the Greensboro Ice & Coal Company?

A. It was under the supervision of the Greensboro Ice & Coal Company. I did not have anything to do with it during the construction of it. That is the reason I spiked it up and left it that way.

Q. What was the condition of this track before this period of repairs, relative to the natural surface of the earth outside? How low was the track below the ground?

A. The bottom tie was about three feet from the top of the ground, I suppose. There was a cut there about three feet, outside of the gate.

Q. During the course of repairs there, was it necessary and did the Greensboro Ice & Coal Company in fact fill in this cut—fill it up?

A. Partly filled in, and the track was thrown over, you know, towards the main line. It was thrown over a great deal from the trestle, and leading out from the frog it was very slight.

Q. Is it now varying in distance above the surface from the frog to where it enters the fence, the lot of the Greensboro Ice & Coal Co. If so, state the elevation?

A. Well, it is a right smart piece above the ground over the trestle.

just leaves the main line slightly, and goes up grade gradually
ntil it gets to the trestle. I do not remember the height of the fill-
g at the trestle.

Q. So that in the change it became necessary to fill up this cut,
d to elevate or make a fill for the final location of the track ?

A. That is right, yes sir.

Q. As it existed prior to this period of construction, what was the
ade—that is, was it up or down from the main track into the lot of
e ice & coal company ?

A. It was slightly down from the main track going into the
siding.

Q. On the final construction the grade is reversed, is it not?

A. Yes sir.

Q. Then in leaving the main track you have to go up ?

A. Yes sir.

Q. And this reverse took place during this period of change there?

A. Yes sir.

Cross-examined by Mr. JUSTICE:

Q. You say you had nothing to do with the construction of the
stle, during the period it was constructed ?

A. No sir.

Q. When did you have anything to do with it—at what time?

A. When they got the trestle done, and ready for the track to be
d, on it. I sent a man there to take charge of it and see that the
k was laid right, and see to the company's interest.

Q. It was put then in its present position ?

A. Yes sir.

Q. Who did you send?

A. I sent the section foreman, Mr. Fogleman.

Q. That part of the Southern railway was under your management
n official of the road ?

A. Yes sir.

Q. And it was exclusively under your management?

A. Yes sir.

Q. What did he do, the man you sent there to see to this ?

A. The Greensboro Ice & Coal Company men put the track back,
I sent him there to see that it was done right, to adapt it, and see
it was done right.

Q. You sent him there to see that it was done, so that when the
oad company there to use it, they could use it with *safety*
s cars ?

A. Yes sir. I sent him there to see that it was fixed right.

Q. Who spiked the rails down ?

A. I told Mr. Fogleman if these men could not spike it, to let
e of the railroad company's hands spike them down. I do not
w whether they did or not. Green hands that way cannot do
spiking.

Q. With the switch spiked, the track could not be used at all could it?

A. No sir. A man could not get in there.

285 Q. When did you have that done?

A. I do not know the day.

Q. Was it about the time they began to work on it?

A. Yes sir. When the track became unsafe to go in there, I spiked it down.

Q. Do you remember about the day?

A. No sir.

Q. Were they working on the trestle at the time?

A. They were tearing up the track when I had it spiked.

Q. Before they began building the trestle?

A. I do not know about the trestle, but they were tearing up inside of the fence and jacking it up on the outside.

Q. How far down in the direction of the C. F. & Y. V. track was it that it was jacked up?

A. It was jacked up all along some, but the end next to the fence was jacked up higher.

Q. Was it jacked up off the ground next to the C. F. & Y. V. track all the way down in that fill there?

A. Not much down next to the track. It was not raised but a little.

Q. Was it raised a little?

A. I do not know—it was jacked up then. It was raised up at the final end.

Q. At the time you had it spiked down, how far would you have to walk on that spur track leaving the C. F. & Y. V. track until you got to where the track was jacked up off the ground?

A. I do not know how far, I never noticed, but it was jacked up I would think 30 feet from the frog, or something like that.

Q. So there was not room at the time you had it spiked for a car to clear the main line and stand on that track?

A. No sir. Not from the clearance post.

Q. With the track jacked up in that way, if a car had gone on to it, it would have come down?

A. Yes sir.

Q. And the car would necessarily have been derailed?

A. Yes sir. We could not have put a car on there at all at the time I had it spiked.

Q. Up to that time it had been used?

A. Up to the time I had it spiked it had been used, if they wanted to use it. I had it spiked as soon as it became unsafe. I had nothing to do with it before then.

286 Q. Do you know the day that the Townsend car was placed on that track?

A. No sir. I had nothing to do with that.

Q. So if a car was placed there for the purpose of being unloaded for Mr. Townsend, on the 11th, you must necessarily have had it

iked down after that car was there, or the car could not have en placed there?

A. No sir. I did not have it spiked down with a car in there.

Q. So the track then must have been safe up to the 11th?

A. It was safe until the time I had it spiked down, but I do not ow when that was.

By the MASTER:

Q. The track that you speak of as being jacked up was the origi- track that was there?

A. Yes sir. It was the first track that was there.

Stand aside.

J. G. FOGLEMAN, witness in behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. KING:

. What was your business in the months of September and Oc- r of the year 1903?

. I was section foreman on the Greensboro section.

. Was the main line opposite this spur track of which we have speaking within your jurisdiction?

Yes sir.

State to the court if you received orders, and from whom, about when, concerning this spur track?

I do not remember the day. Mr. Medrearis, supervisor, gave rders to spike the switch down, that it was not safe. They working on the track, and moving it over outside the gate, but not remember when it was.

What did you do, in consequence of this order?

I spiked the switch so it could not be used.

Did you have any conversation with Mr. Jackson about this about spiking the switch?

No sir.

Are you the man who replaced the track finally?

Yes sir.

How long was it after you put this spike down there before eplaced it, approximately, or as nearly as you can now recall?

I do not know exactly the length of time, but I suppose it was eeks—probably longer than that. I think it must have been eeks.

Cross-examined by Mr. JUSTICE:

Two weeks from what?

From the time the spikes were put in to keep the switch from used till the track was replaced.

When the track was replaced, who had charge of the Southern y?

A. I was section master.

Q. Was it your duty to look after the main line of the Cape Fear & Yadkin Valley railroad along there?

A. Yes sir.

288 Q. How long had you been section foreman along there?

A. Since the 16th of August of last year.

Q. It is the duty of the section foreman to look after the side tracks as well as the main line, the private sidings, etc.?

A. Yes sir.

Q. And it had been your duty then as section foreman to look after the track of the Greensboro Ice & Coal Co.?

A. Yes sir.

Q. And since you had been section foreman, you had been looking after that, as part of your duty?

A. Yes sir.

Q. And you helped build it?

A. Yes sir.

Q. It was in good condition, of course?

A. Yes sir.

Q. You would not have left it for the Southern railway if it had not been in good condition?

A. No sir.

Q. Being in good condition, you did receive the entire track?

A. Yes sir.

Q. Was it not better for practical use after it was fixed than the old track was?

A. I suppose it was. It would be better for the Greensboro Ice & Coal Co. I suppose on account of unloading coal.

Q. And because the coal could be unloaded quicker, it would be better for the railroad company?

A. I do not know about that. I suppose it would.

Stand aside.

289 F. W. JACKSON, witness in behalf of the complainant, being duly sworn, doth depose and say:

Examined by Mr. KING:

Q. What were your business engagements during the months of September and October 1903?

A. Yard conductor of the Southern railway, at Greensboro.

Q. Do you remember the circumstances of the change of this spur track during this month, or about that time?

A. Yes sir.

Q. Do you have any knowledge of a car being placed on this spur track outside of the fence of the Greensboro Ice & Coal Company, for Mr. Townsend?

A. No sir, not at that time, when that work was going on. There was a car in there I know, with some lumber. I taken it out to give them an opportunity to jack the track out.

Q. Do you know who had that car put in there?

A. No sir.

Q. Do you remember the circumstances of having it taken out?

A. Yes sir. He came to me Monday morning, I think it was, to go around and take that car out so they could dig there, and I went and took it out and had it on the coach house track.

Q. Immediately after receiving this order?

A. Yes sir.

Q. Do you recollect what day in the month that was. You said it was Monday morning?

A. No sir. It was somewhere along about the middle of September, but I do not know what day it was.

Q. After the removal of that car, and immediately thereafter, say the next day, did you see that spur track?

A. Yes sir.

Q. What was its condition at that time?

A. They had the end next to the fence there jacked out. It was a kind of little cut, after you leave the main line to go down.

290 And they had that track jacked down to the top of this cut, and they had the track crossways, and the ties were hung to the rails.

Q. How far from the main line or the clearance post would you say it was, when they commenced to elevate and go up on this elevation of which you have spoken?

A. They started to raise it just after you got over the frog a little bit, up to the chute elevation.

Q. At that time, could a single car have been placed in there with safety?

A. I do not know. I do not think it could.

Q. Do you know whether, as a matter of fact, any other cars or car was placed on this spur track after the removal of the Townsend car, up to the time of the completion?

A. No sir. There were no cars put in there until his cars were put in there, and the chute was finished.

Q. So the first cars put in there after the completion were the cars for the Greensboro Ice & Coal Company?

A. Yes sir.

Q. State to the court whether Mr. Hicks or Mr. Thompson or any other party connected with the Greensboro Ice & Coal Company requested you to place any cars on this spur track during this period of construction?

A. No sir, they did not.

Q. In placing the cars after the completion of this switch, where did Mr. Thompson have you place the wood cars?

A. On the west end of the chute.

Q. How many cars would his chute hold at one time?

A. Four, 4 box cars.

Q. How would you place them in, and what orders did he give you?

A. There were four cars put up there in the night, slabs, four, and the next morning I went up there and wanted to make a shift down there, and he had not unloaded but two cars at that time, and I went and made a shift and got two cars, and he unloaded them, and after he got through, I would have to make another shift and set two cars in there.

291 Q. If you placed four cars of wood on his chute at one time, he would not unload but two on the west end, and would make you then move out these two and go back?

A. Yes sir.

Q. How often was that repeated?

A. Several times.

Q. Do you know of your own knowledge that that switch was spiked?

A. Yes sir.

Q. How soon after the removal of the Townsend car of which you have spoken, was it before it was spiked?

A. I think it was spiked right after we taken it out there

Cross-examined by Mr. JUSTICE:

Q. Do you remember when Mr. Alley asked you why you did not place these cars on that track, according to Mr. Thompson's request, and you said because it was spiked down?

A. I do not remember of him coming to me about these cars, sir.

Q. You do not say he did not?

A. I say I do not remember it.

Q. You do not say he did not?

A. I do not know, sir.

Q. You say you do not remember, and you are satisfied he did not?

A. I say I do not remember it. I do not remember anything about it.

Q. The same thing is true in regard to Mr. Thompson's coming to you?

A. I do not remember Mr. Thompson's coming to me.

Q. But you would not say he did not come?

A. I do not remember of it.

Q. The fact that you do not remember would not cause you to say that he did not go?

A. He may have come, but I do not remember of it.

Q. Is the reason for your not placing the cars there the fact that the track was not safe?

A. Well, there is no room there for a car, and the switch was also spiked, and you could not put a car in there without running a risk of turning over.

Q. Is that the reason for it?

A. Yes sir. Of course that is the reason they spiked it down.

292 Q. That is your reason for not placing the cars there?

A. Yes sir.

Q. You had charge of the placing of the cars?
A. Yes sir. I placed a good many.
Q. That is your reason for not placing cars on that spur track?
A. Because it was not safe and we could not put a car in there.
Q. That was so after the Townsend car was placed there, but it was not so before the Townsend car was placed there?
A. The Townsend car was taken out there, there was not any other car put in there to my knowing until these cars were put on the chute.
Q. Why did not then all the 14 cars upon which this $146 demurrage was charged on this spur track, which arrived before the time that the Townsend car was placed there?
A. I do not remember anything about when these cars came here.
Q. Some of them came before the Townsend car was placed there, did not they?
A. I do not know.
Q. You had a book up here with you when you were a witness before?
A. Yes sir.
Q. Where is it?
A. Down at the office.
Q. Why did not you bring it this time?
A. I did not think of it.
Q. You testified before that that book showed you had placed each of those 14 cars for the purpose of being unloaded?
A. No sir, I did not.
Q. Did not you say that?
A. I said there were three cars of slabs, and a car of coal entered on the siding around by the Greensboro Lumber Company, and the slabs stayed there two or three days and the coal 10 or 12 days, to my knowledge.
Q. Did you say your record showed that you had placed these cars for the purpose of unloading?
A. I have got these cars.
Q. Did not you say that your record would show that you had placed those 14 cars so that they might be unloaded, and that
293 you could give me the dates and the tracks, of the placing of those cars?
A. They were placed on his chute after that.

Witness is here informed that he can get his record and refresh his memory if he does not recollect.

Q. Did not you swear when you were examined before that your record would disclose these things?
A. I did not say all of them at once, because there was not room on his track to accommodate all those cars at once.
Q. I did not ask you about all of them at once. The question does not admit of that construction. What I want to know is did you swear when you were examined in this case before the corporation commission, that you could refer to your record and tell me the

dates that those 14 cars were placed, and where they were place
that you- record would show that sometime during the period o
struction of that trestle, that those cars were placed for unloadi
A. I said I had a book, and that I did have a record of those
but it had got misplaced somewhere and I could not find it.
you I remembered those cars I told you about standing around
fence here, cars of slabs and a car of coal, hard coal, and a bo
that stood there. I had a book, but it was not the book that I
during that time.

Q. Did not that record cover part of the month of September
A. I think it started somewhere about the 29th, or something
that.

Q. In referring to your book, did not you swear on your fo
examination in the case before the corporation commission, that
book which you had carried you from the 17th of Sept. to the 31
October?

A. Somewhere is September. I do not remember the day.

Q. And that you had another book which ran from the 8th to
16th. Did not you say that you- book which you had in your h
ran from the 17th?

A. Sometime in September. I do not remember the ex
294 day that it started now.

Q. You would find from that record if you had pla
either of these cars to be unloaded, would you not?

A. Yes sir.

Q. Then if some of those fourteen cars were received before t
11th of Sept., the day the Townsend car was placed you can
tell why you did not put it on this side track?

Objection by complainant, as the witness has expressly said th
the Woodruff car was on the side track from the time that t
Townsend car was there.

A. No sir.

Q. Do you remember of the presence of the Woodruff car there
A. No sir, I do not.

Q. You do not recall that was there just preceding the Townsen
car?

A. No sir, I do not remember the exact time they unloaded tha
car.

Stand aside.

295 C. S. LAKE, witness in behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. KING:

Q. What is your name?
A. C. S. Lake. I am train master of the Southern railway.
Q. How long have you been in the railway service?
A. 24 years.

Q. Does it come within your duties to familiarize yourself with the condition of the tracks and switches, with reference to their safety and otherwise?

A. Yes sir.

Q. Do you remember the condition of this particular spur track leading into the yard of the Greensboro Ice & Coal Company, during the month of September, and October?

A. By writing, yes sir, I do not know of my own personal knowledge.

Q. Assuming that the facts are that the spur track leading from the main line of the railroad into the yard of any industry is in the course of being torn up, at the end of the track, and elevated 8 or 9 feet, that the changes began at one end of the spur track and gradually came down to the switch, and that the whole track is elevated 14 feet from its original position, and these changes proceeded for a time covering three or four weeks, do you, as an expert, regard it as safe to place cars on a spur track undergoing such changes?

A. I would not regard it as safe for a railroad company to place cars on any track which was being worked on, and over which it had not full supervision.

Q. Will you give some reason for your opinion?

A. If the grade was reversed, the grade which formerly descended away from the main track was reversed to such an extent that it would ascend towards the main track, that in itself would make that territory unsafe for cars to be stored.

Q. Why?

A. In the event that cars were stored there, it is possible that they could roll on the main track, and then perhaps a collision would ensue.

296 Q. Have you ever known of any such occurrence?

A. Time and again, sir.

Q. With the result of loss of life and property?

A. Certainly.

Q. Are you familiar with the rules and regulations in reference to the use of cars belonging to what are known as foreign lines, that cross any property of the Southern railway, if so, state these rules and provisions applicable to this matter?

Defendant objected.

A. The railroad company uses a foreign car for a certain number of days, and pays a per diem after a certain number of days, and if the car is kept a certain length of time, pays a penalty. In other words, if the car has been with them three days on their rails, they pay for the use of that car, in addition to its mileage.

Q. How many days do they have to use it in order to be obliged to pay a penalty, to the road owning the car?

A. 30 days.

Q. State whether any of those cars in question were held by us long enough for the Southern railway to have to pay this per diem?

A. Yes sir. (Refers to book in his hands.) Running ov
it would seem that we would have to pay a per diem on th
list of foreign cars.

Q. Mention how many there were of those thirteen cars?

A. There are 13 foreign cars here, and we paid per diem
of them. I see one car here that was placed on the same da
rived. Of course that should be cut out.

Q. The per diem began at the time we received the car
lines at Lynchburg?

A. If we failed to place the car back on their rails within
days. According to this, the N. & W. car 11,032 arrived he
2nd. placed Oct 2nd. Even with that car, which claims t
been released the same day, if we failed to get that car back
home within that time, we would have to pay a per dien

297 Q. That rule applies to all foreign cars?

A. Yes sir.

Q. How many days must pass before the penalty is imposed

A. 30 days from the time the cars comes on our rails.

Q. Every instance in which we keep a foreign car more than
days on our line, we have to pay a per diem, and do pay it, a
case we keep it thirty days, we had to pay a penalty?

A. That is my understanding.

Q. What is the per diem?

A. Under the last rules I read, it was 20c. per day.

Q. What is the penalty?

A. $1.00 per day.

Cross-examined by Mr. COOKE:

Q. If this track spoken of just now by counsel remained u
turbed from the 1st to the 29th of Sept., would you have rega
that track as unsafe to place cars upon it?

A. That would depend entirely on circumstances. When
say undisturbed, do you mean entirely in the hands of the Sout
railway?

Q. Yes, as it — previous to the time of the repairing of the tr

A. If the track had remained as it was before any work was
on it at all, then we could have placed the cars on it.

Q. Would you say a track was unsafe, if a part of the track,
mitting two or three cars, was undisturbed, and the further en
the track over in the yard of some industry was being worked u
would you say that that track was unsafe to put cars upon, if it
undisturbed next to the main line?

A. That would depend entirely upon circumstances.

Q. Nothing else appearing, would you say that the bare fac
the track being worked on on the other end would make it uns

A. Possibly. It would depend on the case.

Q. Take any case, nothing else appearing?

A. As I said awhile ago, I should consider that a railroad c
pany would feel entirely unwarranted and unsafe, for that mat

in using any track that was out of its hands, and in the hands
298 of some other corporation.

Q. Please answer my question. (Question read over to witness).

A. I would have to take some specific case to answer that question.

Q. Take this case, for instance. Just the bare fact of work on one end of the trestle, the far end of the trestle, would that make it absolutely unsafe, everything else being equal, and the track, in good condition and repair otherwise?

A. If that track was being worked on, by people other than the Southern railway people, and they had notified the Southern railway people that the track was in their hands, for that purpose, it would be unsafe, yes sir.

Q. Please read my question over to him. (Question read over).

A. If your honor please, I will have to say as I said a moment ago, that we would consider it entirely unsafe to use a track over which we have not full control.

Q. You know about this particular track, do you not?

A. What about it?

Q. Do you know whether or not this was under the control of the Southern railway from the time they began the work of the trestle?

A. I do not know.

Q. Assuming that it was under the control of the Southern railway, would the bare fact of the work on the trestle in the yard of the Greensboro Ice & Coal Company make it unsafe to place cars on the track not torn up, otherwise being safe?

Q. Assuming that the entire track was under the supervision or control of the Southern railway, I do not think that the Greensboro Ice & Coal Company would have been allowed to do any work on it.

Q. Do you think that is a responsive answer to the question I asked?

A. If you will let me just explain. We could not afford to let our train men work a track that some people who were not as interested as we were, with safety in general, were working on or
299 or disturbing or changing. In the first place, we would not know entirely the particular place where they were working, we would not know whether they would take the same precautions as we would, through lack of knowledge and interest, we would not consider it business-like and therefore unsafe.

Q. Assuming that the Southern railway did have control of this track, as you said?

A. As I said, I have stated nothing of the sort.

Q. As you assumed.

A. I never assumed it.

Q. Assuming that the Southern railway did have entire control over this track, and the Greensboro Ice & Coal Company had given them specifications as to what they intended to do to the track, and they knew what the ice & coal company were going to do with it, the

bare fact of their working on the other end of the track would
have made the part not torn up impracticable for use, would it?

A. I will have to refer you to my previous answer, which co
the case. I told you that I, as a railroad man, would not consider
safe.

Q. Suppose they had put cars on that track, would you say th
the employees were derelict in their duty, after the trestle was begun

A. That would depend on circumstances entirely.

Q. Suppose it is a fact that they put a car on that part of th
track not torn up for a man by the name of Townsend, whil
the Greensboro Ice & Coal Company were working on the other en
of the track, would the employees and agents of the Southern rai
way have been negligent and derelict in their duty?

A. If they had attempted to use a track which was being disturbed
by some other authority, they would have used their judgment, and
it would depend to a certain extent on just exactly what
300 track changes had been made as to whether or not it would
have been positively dangerous. But I should say that their
judgment would have been very questionable.

Q. Do you think now that it would have been any more dangerous
to put those cars there for the Greensboro Ice & Coal Company than
it would for Mr. Townsend?

A. I cannot see how it could, no sir.

Q. You spoke just now of having to pay other railroads for the
cars which were detained by the Southern railway.

A. Yes sir.

Q. When would the penalty accrue?

A. I believe after thirty days. It may be twenty. I gave it as
my opinion that is was thirty.

Q. How much do you pay?

A. $1.00.

Q. Before that time, how much do you have to pay for the service
of the car, after the free time of three days elapsed?

A. I think there is a free time on it, and that the car has to be
paid for at the rate of 20 cents per day after three days. I think
that is the rule, three days from the time it is received.

Stand aside.

The complainant here suspends the examination of its witnesses for
the present, and the defendant is allowed to recall Mr. Thompson.

301 M. W. THOMPSON recalled.

Examined by Mr. JUSTICE:

Q. Is your company solvent, and good for this bill of $146, if it
owes it?

A. Yes sir.

Q. Has it been during all this controversy?

A. Yes sir.

Q. There was something said by Mr. Alley about a conversation he and you had. I do not know whether you were in the court house when the testified or not. He said you and someone else were standing at the end of the trestle, and you told him you had ordered some cars placed on this part of the track which was not torn up, and you ordered Mr. Jackson to place them, and he went and asked Mr. Jackson about it, and he said the track had been spiked down. Describe the condition of the track, and tell what you know about its being spiked down.

A. I remember speaking to Mr. Alley, and telling him we wanted our cars placed on the track. As to the track being spiked down, I was not aware, of my own knowledge, of the track being spiked down at any time. I know that the trestle was being built during a period of about three weeks and during that time, there were five cars placed on the end of the spur, that was not torn up. We tore it up inside there first, and we tore it up out there after the grading was reversed, and the track in construction. The far end of this spur track was raised. There were rails laid on the cross-ties over to the new elevation, and the end of the track was placed up on these ties, and there were cars place- on the track between the ties and the switch, after the end of that track was elevated. And there was no time during the work's going on that the track could not be used to place cars, except for a period of two hours when the work was being finished—from the time the track was first torn up after the end was elevated
302 to the ties, there was possibly one or two cars placed on the end of the track remaining there.

Q. They say that the track was spiked down, so that you could not use it, was closed that way on the 14th. Do you know of your own knowledge whether that portion of the track which was not torn up was used by the railroad company after the 14th of September?

A. Yes sir, it was. The 14, as I recollect, was directly after we began the construction of the trestle, and the track was used during the entire period, that is, at intervals.

Q. Is there anything else that you can think of that is in reply to anything these witnesses have said, here, this morning?

A. Mr. Jackson said about the cars being placed on the siding at the south end of our building, and implied that we could unload these cars there. I would like to state with reference to that, that inside the ground was filled with lumber to the height of 10 or 12 feet, and it was impossible to unload any cars there. I could not say what the cars placed there were loaded with. I had no notice of their being placed at any point at any time, until they were finally placed on the trestle, and I did not know that they were our cars.

Cross-examined by Mr. KING:

Q. When did you commence the repairs or changes in this spur track?

A. I believe along about the 8th or 9th of September, to the best of my knowledge.

Q. What day, after the 14th, did you see a single car standing on that spur track ?

A. I could not give you the exact date.

Q. Do you know for whom it was placed ?

A. I believe it was to load a tank. There were five cars placed there at different times, and I believe the one after this track was elevated was the tank car.

Q. You saw the Woodruff car after the 14th ?

A. I did not say so. I said I believed it was one of the cars, and that that was the car.

303 Q. Then you do not know when the Woodruff car was placed there?

A. Not the exact day.

Q. Do you say the Townsend car was placed there after the 14th ?

A. I did not say so.

Q. Do you say that any car was placed there after the 14th ?

A. I say there was one car placed there after the 14th. I cannot say positively for whom.

Q. Was it put there or not ?

A. I do not know what time it was put there.

Q. I suppose it was shifted in because of the crowd, and taken right out again ?

A. The car that was placed there after this end of the track was elevated remained there for sometime, more than 24 hours.

Q. You heard Mr. Jackson say awhile ago that you would not unload four cars at a time, but made him shift two cars to the end of your trestle ?

A. Yes sir.

Q. That is true ?

A. No sir. We gave them the placing of the cars, so that we could handle four cars and according to my knowledge, he made his mistake, and did not place the cars in there as directed. We had both coal and wood. We had room at one end of the trestle to unload wood and room for coal at the other. I gave Mr. Alley specific directions how those cars were to be placed in there.

Q. They did place four cars ?

A. I cannot say—they made an error.

Q. That is to say, they made an error in your judgment ?

A. They made an error, because I could not have ordered three or four cars placed there. I could not have unloaded them if placed there.

Q. You could have unloaded four cars if placed there at one time ?

A. I could not have unloaded them.

A. I could not hove unloaded them.

Q. They were standing on your ground ?

A. Yes sir.

Q. It could not hold four ?

A. Yes sir, it could.

Q. If four cars were placed there at one time, would you have unloaded it then?

304 A. We would not have thrown the wood out and clogged up our drive way, as we would have had to do. It was not built to unload four cars of wood, it was built to unload four cars of coal, which it could do, and we could unload five.

Q. You would not take the wood out unless it was put down on the far end of the boiler?

A. You are supposing a case which was not done.

Q. Would you have taken it unless it had been placed there?

A. If it had been placed as we directed, we would have taken it.

Q. Would you have taken it unless it was placed there?

A. Why, certainly not, and no one else would. We have the privilege of designating where our cars should be placed, we unload two cars which is all they could put in.

Stand aside.

305 Mr. HICKS recalled.

Examined by Mr. JUSTICE:

Q. Do you know when this track was spiked so that it could not be used, and the spikes remained in there, as the witnesses have spoken of?

A. I do not know the exact date it was spiked. I know it was spiked.

Q. Who did it.

A. I did it.

Q. Who was present?

A. The roadmaster.

Q. Did he tell you to do it?

A. Yes sir.

Q. Did he see you do it?

A. Yes sir.

Q. How long did it remain spiked?

A. I do not know exactly how long it remained spiked. The first I noticed the spike had been drawn and another shift made in there, there were two dead cars in there.

Q. How long after you put the spike in before you saw the railroad using the track?

A. To the best of my knowledge it was two or three days. They put two dead cars in there. I mean by dead cars, cars on tracks where they do not belong.

Q. About how long was this before the trestle was completed, and ready for use?

A. It was not so long, it was not many days.

Q. About how many days?

A. It must have been something like 8 or 10 days.

Q. From the time this spike was drawn up to the time this track

was slid over to its present place, was the spur track used by the railroad company?

A. These two cars were put in there, after the spikes were drawn.

Q. Was that track between the fence and the main line of the C. F. & Y. V. R. R. used after the rear end beyond the fence was elevated?

A. Yes sir. The end of the track out next to the fence was elevated right after we tore up the track. It was down grade there, going into the yard, and I jacked that end of the track up and put cross ties there, so if the brakes got off the cars it would not
306 run down in the yard, and it remained in its present position until it was jacked up and moved over on the embankment.

Q. When was that jacked up to be moved over on the embankment?

A. To the best of my knowledge it was between the 21st of September and the 1st day of October, right along about that time.

Redirect by Mr. KING:

Q. Do you recollect the time you spiked that switch?

A. Yes sir.

Q. Do you remember how many days it was before that spike was drawn?

A. I cannot say just when the spike was drawn, but it was two or three days before, I seen these two cars standing on the track.

Q. Do you know who drew the spike?

A. No sir.

Q. How long did those cars stand there?

A. I do not know how long they stood there.

Q. How many days?

A. I do not know.

Q. The best of your recollection?

A. They must have stood there 2 or 3 days.

Q. At that time, part of the track was jacked up?

A. The lower end of the track was jacked up, and the ties put under.

Q. After they were taken out, the balance was jacked up?

A. We never taken them ties out at all. We jacked the track up on there.

Q. After the removal of those two cars the balance of the track was jacked up?

A. Yes sir.

Q. And finally it was moved over to the new position?

A. Yes sir.

Q. And that was about the 1st of October?

A. The last of September or the 1st of October.

Q. And the period covered from the time you first drove that spike to the first of October, was about two weeks?

A. No sir. I do not think it was two weeks.

Q. You do not pretend to say it had not been spiked down
07 until you spiked it?

A. Not to my knowledge it had not been spiked.

Stand aside.

308 Mr. JACKSON recalled for complainant.

Examined by Mr. KING:

Q. Something was said here yesterday by a witness on the part of the Greensboro Ice & Coal Company about a car of supplies for this trestle being carries to Revolution. Please explain that.

A. There were two or three cars came in there for Revolution, I think the W. W. Mills Lumber Co. sold it to them, Mr. Morris came down and told me there were two cars for Revolution, and there was some timber on one of them he wanted for ties on that chute, and he could not tell which car until he had seen it.

Q. His cars came in destined for Revolution—what became of them?

A. They went to Revolution.

Q. Mr. Morris did not intercept it here?

A. No sir.

Q. And it went to Revolution and had to be brought back?

A. Yes sir.

Q. Was it brought back promptly?

A. Yes sir.

Q. It was destined for Revolution, and billed Revolution?

A. Yes sir. He told me there were two or three cars coming for Revolution, but he was going to stop one of them here and get some ties off for that chute, but he could not tell which car it was until he saw the timber, and the car came in and went right out, and that is the reason it went to Revolution.

Cross-examined by Mr. JUSTICE:

Q. Do not you know that there was a car of lumber intended for this trestle, and that later there was some lumber on a car destined for Revolution, and that you are not referring to the car Mr. Morris referred to at all?

A. Mr. Morris did not know the car number or anything—he said he could not tell until he saw it.

Q. But do not you know that it is not the carload of lumber he was testifying about?

A. I do not know what car he was talking about.

309 Stand aside.

The master here took a recess, until another hearing is had at Raleigh, at a date to be agreed on hereafter.

310 *Continued Evidence.*

Hearing at Raleigh April 25th, 1904.

In the Circuit Court of the United States for the Eastern District of North Carolina, Sitting in Equity.

THE SOUTHERN RAILWAY
vs.
THE GREENSBORO ICE & COAL COMPANY ET ALS.

The hearing in *the* this — was resumed on April 25th, 1904, in the office of Col. A . B. Andrews, at Raleigh, N. C.

Present:

F. H. Busbee, Esq., attorney for complainant.

R. H. Battle, Esq., attorney for defendants.

Col. A. B. ANDREWS, witness on behalf of complainant, being duly sworn, doth depose and say:

Examined by Mr. BUSBEE:

Q. What was your occupation and position in 1903, and have you the same position now?

A. I am first vice-president of the Southern railway, and was in 1903.

Q. Mr. McNeill in his evidence testified that the commission mentioned the matter of the Greensboro Ice & Coal Company to you prior to the formal service of the order. Please state if any written or formal notice was given to you in regard to this case?

A. None that I have any recollection of.

Q. Was there anything served in writing, or formally, prior to the issuance of the order?

A. None that I have any recollection of.

Q. Please state your habit, in regard to calling upon the office of the commission and talking about the railroad and other matters, and if you ever made any appearance in this case?

A. I sometimes go to the corporation commission office and talk to them about railroad and other matters generally. I
311 have no recollection of the commission giving me any notice at any of these meetings in regard to the Greensboro Ice & Coal Co. If they did speak to me about it, which I think probably they did, I did not consider it a notice, from the fact that they always insist that all matters of this kind shall be in writing, with a view to making the record.

Q. You have taken no part in the management of the defense of these matters?

A. None whatever. It does not come under my charge, and if

they said anything to me about it, I simply referred them to Mr. Albright.

Cross-examined by Mr. BATTLE:

Q. As first vice-president of the Southern railway, are you not general manager of its affairs in North Carolina and the States south of it?

A. As first vice-president, I have no more to do with the affairs of the Southern railway in North Carolina than I have in Mississippi, Kentucky and Illinois.

Q. But still you have the general supervision of the business?

A. I have general supervision of parts of their business, but do not undertake to look after the details.

Q. You are the highest officer in the State of North Carolina, of the Southern railway?

A. I am the only executive officer in the State of North Carolina.

Q. Mr. McNeill stated in his testimony that before the issuing of the order of October 31st, you were in the office of the corporation commission, and the matter of the complaint of the Greensboro Ice & Coal Company was spoken of between the chairman, Mr. McNeill, and yourself, and that you said Mr. Albright had been to Greensboro and investigated the matter, and had explained it to them. Is or is not that your recollection of the facts?

A. I think it is very probable I said so.

It is admitted and service of any process in North Carolina can be made on Col. Andrews.

Stand aside.

312 A. A. WELLS, witness on behalf of complainant, being duly sworn doth depose and say:

Examined by Mr. BUSBEE:

Q. Give your name and occupation in October 1903, and your present occupation.

A. Roadmaster of the Danville division of the Southern railway, in 1903 and 1904.

Q. State whether or not you were consulted in regard to the building of the spur track into the yard of the Greensboro Ice & Coal Company?

A. No sir, not until the original track that they had been using for several years had been torn up, and in place of that a coal trestle was built. And when *I* was commenced, then I was consulted by the contractors controlled by the Greensboro Ice & Coal Company.

Q. At what time were you consulted?

A. It was about the 10th of September, 1903, as to the standard track required by the Southern railway in building coal trestles.

Q. About when was the trestle completed?

A. About the 30th of September.

Q. What was its condition on September 10th when you first examined it?

A. The trestle had not been built on September 10th. They had just commenced, and the contractor called upon me for blue prints of the standard track, and I furnished it.

Q. Do you know when the old track was torn up or disturbed?

A. It was torn up about the 8th or 9th of September, as far as I recollect.

Cross-examined by Mr. BATTLE:

Q. Where were you residing at the time?

A. In Greensboro.

Q. The work upon that spur track was commenced in the yard of the Greensboro Ice & Coal Co.?

A. Yes sir.

Q. And that did not involve any change in the track near the railroad?

A. Yes sir.

313 Q. What change was made?

A. The track as originally used by the Greensboro Ice & Coal Company, was torn up, the spur track that they built was built just along side, and they took the dirt from where this old track was torn up, to make the fill, going from the main line of the A. & Y. to their trestle. That required the original track where it leads from the switch to be thrown around, making about a four degree curve. The track was shifted, say ten feet outside of their yard.

Q. When was the first work done on the track at the switch?

A. There was not any work done on the track at the switch until the trestle was completed.

Q. So that cars could stand upon that spur track until the trestle was completed?

A. Yes sir, one car.

Q. How long did it take to move the track around?

A. A couple of days after they put the work on the trestle.

Q. So that, with the exception of two days, a single car could stand upon that side track?

A. Well, no sir. The Greensboro Ice & Coal Company elevated that track there from its former position in order to get dirt from under the ties, to make the incline from the level of the main line of the track to the top of their trestle, making an incline, I suppose, of about 2½ per cent. grade.

Q. When was that done?

A. That was done between the 15th and the 30th of September. The work was done by the Greensboro Ice & Coal Company, that grading.

Q. During how long a period was it impracticable to run a car from the track of the C. F. & Y. V. R. R. on the grade of the yard of the Greensboro Ice & Coal Company?

A. I suppose 7 or 8 days.

Q. Do you remember the day that you signified your approval of the track as run?

A. I did not approve of the track. The superintendent of the road there, about the 1st of September, sent me a tracing gotten up by the superintendent of the Greensboro Ice & Coal Co., with a letter asking me if there was any objection to changing the track,
314 from a railroad point of view, and I answered his letter and said there was none. And I suppose from that, he gave the authority himself for the Greensboro Ice & Coal Company to go to work and make the change.

Q. Who gave the authority?

A. The superintendent, sir, Mr. E. H. Coapman, supt. of the Danville division of the Southern railway.

Q. Were you called upon to approve of the track as it was finally adjusted.

A. Only by the Greensboro Ice & Coal Company.

Q. And you did approve it.

A. I did, yes sir.

Q. There has never been any objection on the part of the Greensboro Ice & Coal Company to the Southern railway's using that track for other business, when it was not occupied by cars in their own busines?

A. None that I know of.

Q. When did you make an examination of the new track after its completion?

A. About the 30th of September.

Q. Can you fix the time that this 7 or 8 days covered of which you have spoken?

A. I cannot.

Redirect:

Q. You said that for a part of the time that the trestle was under construction, that there was room on the spur track for one car. Do you know whether the track was occupied at that time for other purposes?

A. I understood from the yard people——

Complainant objected, as hearsay.

Q. Did you see it in use by other parties?

A. I may have seen it, but I did not take notice of it at that particular time.

Q. Would it come under your jurisdiction to make orders concerning the occupation of the track.

A. No sir.

Q. Your duties would be construction?

A. Yes sir.

315 Q. Owing to the fact that the elevation of the track began close to the switch and that the track was moved to one

side, has it ever been possible to have used any considerable
this spur track after the work of construction on the track
to the trestle began.

A. Yes sir, it was used.

Q. Could it have been used—I do not mean while the tres
being built, but while the track leading to the trestle was bein
and the dirt moved from under it, could it have been used
condition?

A. No sir.

Q. Do you recall how long the construction was in the co
indicated in the last question?

A. To the best of my recollection, I think about ten or
days, that is, the construction of the trestle.

Q. To prevent misunderstanding, please state again whe
not, the time during which the old track was made impass
reason of the fact that the track between the switch and the
was being changed and elevated, was ten or twelve days?

A. Yes sir, to the best of my recollection.

Q. During the time, would it have been feasible to have u
old track for unloading or storing cars?

A. No sir.

By the MASTER:

Q. When did this work first commence?

A. I think it commenced—the first work commenced was
up of the old track. I think that was about the 10th of Sep
1903, and it ended the 30th of September.

Q. About twenty days, then?

A. Yes sir.

Recross:

Q. You are a civil engineer?

A. No sir, I am not a civil engineer.

Q. How far is the main track of the Southern railway fr
Greensboro Ice & Coal Company's plant?

A. That would be about 35 feet out to the left of the mai

Q. That would be directly north?

A. No sir, it would be south, that is, measuring in a
316 way from the main line of the Southern railway to
& coal company.

Q. What access is there from the main line of the Souther
way to the Greensboro Ice & Coal Company?

A. By cross-over switches from the main line.

Q. Is there anything else intervening?

A. Nothing else.

Q. What do you mean by cross-over switches?

A. That is a switch leading from one track to another,
from this th that. (Witness illustrates with his hands). A
have to get in laterally to get from one track to another.

Q. Is there any wagon way from the main line to the plant of the Greensboro Ice & Coal Company?

A. Yes sir. South Elm street, and then an alley between the colored building and the C. F. & Y. V. R. R.

Q. Which is South Elm St.?

A. The one running up to the business part of the town from the Southern railway depot. That one that runs by the hotels.

Q. So that to get freight into the yard of the Greensboro Ice & Coal Co. you would have to go around by Elm street?

A. Yes sir. The building from the main line would be about 40 feet, but your question was from the main line of the Southern railway to their track. We have a side track within four feet of their building, they load from the cars right into their door. That is accessible.

Stand aside.

317 "A."

EXHIBIT 2. Filed Aug't 27th, 1904.

North Carolina Car Service Association, Raleigh, N. C.

Revised Car Service and Storage Rules.

Effective July 15, 1903. Superseding all Previous Rules and Instructions to Agents.

318 INDEX.

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319 RULE I.

CARS SUBJECT TO RULES.

All carload freight, all freight carried at carload rates, and all freight in cars, whether full carload or not, taking track delivery will be subject to Car Service Rules.

Exemptions: Cars with live stock and through consignments, except under conditions of Rule V, are not subject to Car Service Rules and shall not be included in reports to Managers.

RULE II.

FREE TIME ALLOWED.

SECTION 1. On all commodities for unloading or loading, forty-eight (48) hours (two days) free time will be allowed, except that,

FOR UNLOADING.

SEC. 2. Seventy-two (72) hours will be allowed for unlo
Fertilizer, Brick, and the following commodities when in *bulk*
Cotton Seed, Cotton Seed Hulls, Coal, Coke, Fertilizing Ma
Grain, Lime, Tan Bark and Dressed Lumber in box cars.

SEC. 3. In calculating time, Sundays and legal holidays a
cepted. Prompt notice shall be given by agents to consignees
arrival of cars, showing car initial and number, contents, weigh
amount of freight charges due thereon, or as may be shown on
bill, and such notice should be promptly acknowledged by the
signees, indicating the delivery track upon which the cars are de
placed.

320 SEC. 4. Notice shall be given by delivering same in wri
in person, or by leaving same at consignee's place of busi
or by depositing it in the postoffice.

LEGAL HOLIDAYS.

SEC. 5. January 1, January 19, February 22, May 10, Ma
July 4, Labor Day, Thanksgiving Day, and December 25.

Free time will be allowed on Monday following when any o
above dates fall on Sunday.

RULE III.

COMPUTING TIME.

SECTION 1. On cars for unloading the free time shall be comp
from the first seven (7) o'clock a. m. of the day following da
notice of arrival.

SEC. 2. On cars placed for loading, the free time shall be
puted from the time such cars are placed or held subject to orde
shippers.

RULE IV.

CHARGES.

After the free time allowed has expired, if cars are not releas
charge of one ($1.00) dollar per car per day or fraction thereof
be made and collected.

RULE V.

Cars held for purposes other than those specified under Rule
viz:

1. Awaiting orders from shippers or consignees;
2. For re-consignment;

321 3. For change of load by shipper or consignee;

4. For amended instructions from shipper or consignee

5. For payment of freight charges before delivery to connecting line;

6. For surrender of bill of lading before delivery to connecting line;

7. For change in billing, for milling, shelling, cleaning, compressing, etc.;

8. On account of improper, unsafe, or excessive loading:

9. Or for any cause for which shipper or consignee and not the carrier is responsible, shall be subject to Car Service charges after the expiration of twenty-four (24) hours from arrival at the point of stoppage, and if the lading is transferred the Car Service charges shall continue on the car or cars to which transfer has been made, to be collected or billed as advance charges when cars go forward;

10. The above specifications (1 to 9 inclusive) are for the purpose of assuring full time allowed for loading and unloading, as provided in Rule II, and shall not apply upon cars for unloading reconsigned to another track of the same line for accommodation of shipper or consignee. Upon all such cars the free time allowance specified in Rule II shall apply.

RULE VI.

LOCAL TRANSFER AND SWITCHING AT JUNCTIONAL POINTS.

322 Where cars are loaded at a warehouse or at an industry upon one line to be delivered in the same town or city at a warehouse or at an industry upon a connecting line, within a distance of two (2) miles from the starting point, upon a switching charge, only twenty-four (24) hours free time shall be allowed for loading and twenty-four (24) hours for unloading such cars, the free time to be computed from the time such cars are placed for loading or held for loading upon order of shipper, and for unloading from the time car is placed as directed by the shipper, except as otherwise provided under Sections 1 and 2 of Rule X.

RULE VII.

COASTWISE AND EXPORT FREIGHT.

Cars containing freight consigned to ports will be subject to the free time allowance specified in Rule II, unless the freight is for export or coastwise movement and Terminal Agent is so advised within the free time allowance specified in Rule II, when a maximum of five (5) days free time may be allowed from the date of arrival of all such cars; thereafter regular Car Service Rules will apply. The railroads reserve the right to unload the cars at any time they may see proper.

RULE VIII.

CARS CONSIGNED TO ORDER, ETC.

When consignors ship goods consigned to themselves or order, agents shall give notice to such consignees or persons to whom ship-

ping directions order delivery. This notice may be addressed
mail to the consignee at point of delivery, and car service
323 begin as in other cases of notice by mail; and the mailing
such notice shall be sufficient notice in such cases, whether
consignee actually receive the same or not.

RULE IX.

BELT OR SWITCHING ROADS.

Belt, electric, tram, logging and other minor railroads not me
bers of the Car Service Association handling cars for themselves
other parties, shall be charged with all cars delivered to them fr
the time placed upon interchange tracks until returned thereto,
lowance being made for the time necessary to perform the swit
ing service, in addition to the free time specified in Rule II for
loading and loading.

RULE X.

PLACING CARS.

SECTION 1. Cars containing freight to be delivered on carload d
livery tracks or private sidings, shall be placed on tracks designate
immediately upon arrival, or as soon thereafter as possible. Whe
delivery can not be made on specially designated yards or tracks (o
account of the tracks being fully occupied, or for any other reason b
yond the control of the carriers) delivery shall be made at the near
est available point.

SEC. 2. Cars for unloading shall be considered placed when such
cars are held awaiting orders from the consignors or consignees
and for the payment of freight charges or surrender of bills o
lading.

324 SEC. 3. Cars for delivery upon private tracks already fully
occupied, and delivery thereof impracticable, shall be con-
sidered placed at the time of their arrival at receiving yard.

SEC. 4. When cars and tracks are both owned by the same private
party, no charge will be made.

SEC. 5. Cars for loading shall be considered placed when held
upon orders of shippers.

SEC. 6. Until empty, cars will not be subject to orders for loading,
either by the owners of the property contained therein or any other
shipper.

RULE XI.

COLLECTIONS.

SECTION 1. It is the duty of the Agent to demand payment of Car
Service on all cars before delivery, where same has accrued between

arrival and ordering. It is also the duty of the Agent, where he has any doubt about Car Service being paid, to demand one $1.00) dollar Car Service when the free time allowed for unloading or loading cars has expired, and if payment of said service is refused, to decline to deliver the car and to prevent the lading from being removed, either by sealing the car, locking the car, or placing it where it is not accessible to consignee or shipper until Car Service has been paid.

SEC. 2. In case consignees or consignors refuse to pay or unnecessarily defer settlement of bills for Car Service charges, the railroads shall, upon notice to that effect from the Manager, refuse to switch any cars for such consignees or consignors until such charges are paid.

325 SEC. 3. When cars are loaded by shippers and Car Service charges are not paid before forwarding, Agents must enter the amount upon bills of lading and way-bills as "Advance charges."

SEC. 4. When freight is transferred Car Service charges will continue on the car or cars into which transfer is made.

RULE XII.

CONDITIONS UNDER WHICH TIME WILL BE EXTENDED.

SECTION 1. When during the period of free time the weather is so severe, inclement or rainy that it is impracticable to secure means of removal or loading of freight, or where from the nature of the goods removal or loading would cause injury or damage, upon application to the Manager, authority will be granted in all proper cases. This rule applies to the state of the weather during business hours only.

SEC. 2. Where a consignee or consignor resides more than five (5) miles from the depot, and whose freight is destined to or from his residence, or place of business so located, if, with the exercise of due diligence, such consignee or consignor is not able to load or unload carload freight within the free time specified under Rule II, upon application to the Manager, extension of time will be made for loading or unloading, as the conditions in each case would seem to justify, except that the time will not in any case be extended beyond five (5) days, except as provided for in Section 1.

SEC. 3. Whether complaint is made or not, agents must inform themselves when these unfavorable conditions exist, and must
326 promptly report same to the Manager, in order that, in proper cases, Car Service charges may be remitted.

SEC. 4. Whenever by reason of delays in transit cars are bunched and more cars than one are received at same time, no demurrage shall be made for excess over one car: *Provided*, at least one car shall be unloaded daily. When more than one car per day is forwarded from shipping point the consignee will be required to unload the same number of cars daily.

RULE XIII.

DECLINING TO RECEIVE CARS FROM CONNECTING LINE.

In cases where any railroad is unable or unwilling to receive freight tendered by another to be placed for delivery, it shall promptly notify the line tendering of its inability to receive, in order that proper notice may be given to consignees or consignors that delivery can not be effected and that request may be made for other disposition of the freight. Should such freight not be disposed of within the free time allowance specified in Rule II, after notice has been served upon consignees or consignors in accordance with the above, Car Service should be charged.

RULE XIV.

REPORTS FROM SIDE TRACKS.

Reports of movements of cars on side-tracks where there are no agents shall be made by agents in charge of cars for those side-tracks. Agents will get all information possible from local freight conductors or other sources as to when cars are received, unloaded, loaded and forwarded, and look after Car Service charges that may accrue at such points.

327

RULE XV.

CLAIMS.

Moneys collected under the rules of the Association shall not be refunded, except by order of the Manager.

Claims should be made direct to the Manager with paid Car Service bills attached, claimants in each case plainly stating upon what grounds the refund is requested. The Manager will investigate and promptly decide in each case.

RULE XVI.

ERRORS.

Each railroad company shall pay Car Service charges accruing by reason of its errors.

RULE XVII.

AUTHORITY.

Agents shall report to and receive instructions from the Manager of the Car Service Association in all matters pertaining to the enforcement of Car Service Rules.

By order of the Association:

P. R. ALBRIGHT, *Manager.*

***Raleigh, N. C., July* 15, 1903.**

328

STORAGE RULES.

RULE I.

FREIGHT SUBJECT TO STORAGE CHARGES.

SECTION 1. All freight received for delivery or forwarding is alike subject to Storage Regulations.

SEC. 2. If stored in cars in railroad yards, the charge of $1.00 per car per day will continue on the cars until released.

SEC. 3. If stored in or on station buildings, warehouses, platforms, wharves, or piers of the carriers, the storage charges will be as follows:

RULE II.

FREE TIME ALLOWED AND RATES FOR STORAGE OF FREIGHTS.

SECTION 1. For storage of package freight and all freights carload or less that may be unloaded in or on station buildings, warehouses, platforms, wharves or piers of the carriers, and which is not removed by the owner thereof from the custody of the carriers within forty-eight (48) hours, a charge for storage for each day or fraction of a day that such consignments may remain in the custody of the carriers of one (1) cent per one hundred pounds per day, with minimum charge of five (5) cents for any one package or lot for one consignee shall be made, but no charge for any shipment shall exceed the car service rate ($1.00 per day) which would apply upon the same shipment if held in cars; nor shall any charge on less than carload shipments exceed the charge for carload.

329 SEC. 2. The free time allowance on carload freight shall be the same as allowed on similar freight when held in cars, computed as per rule 3, it being understood that twenty-four (24) hours free time shall be allowed by the Water Carriers in addition to the free time prescribed under Car Service and Storage Rules for the Rail Carriers, on all commodities, carload and less, for both delivery and forwarding.

NOTE.—A charge of $1.50 per car will be made for unloading carload freight, from cars, when stored.

RULE III.

COMPUTING TIME.

SECTION 1. On all freight for delivery subject to storage, the free time shall be computed from first 7:00 o'clock a. m. of the day following date of notice of arrival.

SEC. 2. On freight deposited by shippers in or on station buildings, warehouses, platforms, wharves of piers of the carriers and no

shipping instructions given, the free time shall be computed from the first 7:00 o'clock a. m. of the day following deposit of such freight.

SEC. 3. In computing time, Sundays and legal holidays are excepted.

RULE IV.

NOTICE TO CONSIGNEES.

SECTION 1. Prompt notice shall be given by Agents to consignees of the arrival of all freight, together with contents, weight and amount of freight charges due thereon, or as shown by way-bill.

SEC. 2. Notice shall be given by delivering same in writing, in person, or by leaving same at consignee's place of business or by depositing it in the postoffice.

330

RULE V.

SHIPMENTS BILLED TO ORDER, ETC.

SEC. 1. Shipments detained because billed "to order," and awaiting bills of lading, or instructions as to disposition, shipments held for want of billing instructions, shipments held for inspection, change of billing, or for any other purpose, by owner or his agent, are subject to storage charges, and if such shipments are forwarded to any other point, accrued storage charges will be added to billing as back charges.

SEC. 2. When consignors ship goods consigned to themselves or order, the Agent shall give notice to such consignee or person to whom shipping directions order delivery. This notice must be addressed by mail to the consignee at point of delivery, and storage will begin as in other cases of notice by mail, and the mailing of such notice shall be sufficient notice in such cases, whether the consignee actually received the same or not.

RULE VI.

SHIPMENTS HELD AWAITING FORWARDING INSTRUCTIONS.

Where freight of any kind is unloaded by consignor in or on station buildings, warehouses, platforms, wharves or piers of the carriers and no shipping instructions given for forwarding, Agents will uniformly charge storage, if delayed beyond time allowed, (see Rules II and III) before shipping instructions are given. Charges accruing in such cases shall be billed out as advances when the shipment goes forward, if not paid by shipper.

331

RULE VII.

CONDITIONS UNDER WHICH TIME WILL BE EXTENDED.

When due diligence is used, agents are authorized to make extension of time on package freight which can not be removed on account of bad weather or roads or distance to be hauled from station. The maximum time, account of distance, which may be allowed by Agents is: On shipments destined to points over three (3) and under ten (10) miles, five (5) days, and on shipments hauled ten (10) miles or over, seven (7) days, computed from first 7:00 o'clock a. m. following date of notice of arrival. When by reason of long distance hauls or unusual weather conditions, additional time may be necessary, Agents will ask for special instructions from the Manager, stating the circumstances, before taking action.

RULE VIII.

COLLECTIONS.

SECTION 1. Agents shall collect storage charges accruing under these rules with the same regularity and promptness as other transportation charges, and will in like manner be held responsible for same.

SEC. 2. It is the duty of the Agent to require payment of accrued storage charges before delivering the property.

SEC. 3. Agents will report collection of storage in warehouses to Auditor and to the Manager of the Car Service Association, except where the carriers engage in the business of public warehousing.

332

RULE IX.

CLAIMS.

Charges collected under these rules shall not be refunded except under authority of the Manager.

RULE X.

COMPLAINTS AND COMPLICATIONS.

All Complaints that arise from failure to conform to any of these rules, or from neglect or discrimination in enforcing the same, and all doubtful and complicated cases involving any uncertainty as to the proper meaning and application of the rules, must be referred to the Manager for decision.

By order of the Association:

P. R. ALBRIGHT, *Manager.*

333 INSTRUCTIONS TO AGENTS.

USE OF FORMS.

Form 1 will include all track cars, loaded or unloaded, regardless of time detained. In case of cars received for unloading, show the actual time arrived, ordered, placed and released; for empty cars placed for loading, show time placed for loading and time released. Full instructions are printed on the face of this form.

This report must be made out daily, except Sunday, and forwarded so as to reach the Manager's office not later than the first day following its date. Sunday's business should be included in Monday's report.

Form No. 2 will be used when there are no cars to report, instead of Form No. 1.

Form No. 3 will be used for reporting and correcting all errors which have been made in car reports to the Manager. Care must be taken to fill in all necessary blanks and give full particulars as to why the corrections are made.

Form No. 4 will be used by agents in reporting Car Service collections. This report will be made out closing with the 7th, 14th, and 21st and the last day of each month, showing the amounts collected during the period covered by each report. It must show car numbers, the amounts collected on each, and names of parties from whom collections are made.

This report should be forwarded in time to reach the Manager's office not latter than the second day after the period it
334 *covers.*

Form No. 5 will be used by agents in reporting uncollected Car Service at the end of each month, care being taken to fill out the columns on the face of the report properly.

SUPPLYING FORMS.

Agents will make requisition upon the Manager for the necessary blanks for use in connection with Car Service matters.

335 EXTRACTS FROM THE ARTICLES OF AGREEMENT OF THE ASSOCIATION.

Agents will carefully note the following extracts from Articles of Agreement:

ARTICLE I.

OBJECT.

SECTION 1. The object of this Association is to secure the prompt loading and unloading of cars, and to that end to enforce a legal,

reasonable and uniform charge for detention of cars when the cars are detained over the free time prescribed in the agreement and rules.

ARTICLE III.

SEC. 3. Moneys collected under the rules of this Association shall not be refunded, except upon the written order of the Manager.

SEC. 4. The Manager shall construe this agreement, and all rules and regulations adopted thereunder, and his construction shall be binding on all parties until changed by the Executive Committee or by the Association.

SEC. 7. (*a.*) The Manager shall arrange to obtain from the local agents of the respective roads, at the points covered by this agreement, proper daily reports of all cars subject to Car Service rules; and such agents and other local officers of the respective roads
336 shall be instructed to furnish such daily reports and such other information in relation to Car Service matters as may be required by the Manager for the purpose of this agreement.

(*c.*) The Manager, or his agent, shall have access to all papers, way-bills, bills of lading, etc., deemed necessary by him to obtain a proper check upon the reports of local agents.

ARTICLE V.

It is agreed that the collection of regular charges for detention of cars and use of track shall be enforced by all the railroads belonging to this Association at all points now or hereafter covered by this agreement, as provided in the rules governing same, all collections for car service to belong to the road upon whose tracks the cars are delayed.

ARTICLE VI.

SECTION 1. No railroad company, member of this Association, shall hold in transit any loaded cars destined to points covered by this agreement, unless the same shall be done for the purpose of avoiding blockades.

SEC. 2. In case it is necessary to hold out any freight for such point or points covered by this agreement, for the purposes stated, the Manager of the Association shall be immediately notified of such action by the railroad company doing it; and he shall investigate the matter with the object of determining whether such action is proper and is not a violation of the intent of this agreement.

SEC. 3. No railroad company, member of this Association, shall store contents of loaded cars in their freight warehouses to
337 avoid charges for detention. In case of a scarcity of cars, the agent shall state particulars of each case, asking authority to unload, and the Manager will act upon each case on its merits. In case where carload freight is unloaded in warehouse, storage charges shall be collected by the Agent, reporting to the Manager the amount of storage charges so collected. In all cases where rail-

road companies engage in the business of public warehousing, the storage charges for carload freight subject to Car Service shall not be less than charges of other public warehouses in the same place. Such storage charges and the detention to freight thereunder shall not be reported to the Association; but the Manager or his inspectors shall have the right of inspection of the books and records of such warehouse business, and no refund of such warehouse charges shall be made.

SEC. 4. Any road holding back or storing cars or freight destined to points embraced in this agreement, without authority of the Manager, for the purpose of avoiding the charges for detention, shall be considered as having violated the terms of this agreement, due to the Treasurer of his road.

ARTICLE IX.

It is distinctly understood and agreed that each road party hereto will charge the local Agent with all Car Service charges accruing, whether same are collected or not, and that no Agent will secure relief from said Car Service charges except by relief voucher signed by the Manager of the Association, or by remittance of the amount due to the Treasurer of his road.

338 EXHIBIT No. 3.

Filed August 27th, 1904.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

"D." RALEIGH, *October* 31, 1903.

THE GREENSBORO ICE AND COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

This cause coming on to be heard upon complaint and after notice to the defendant and an appearance by them, and it being made to appear to the commission by the plaintiff that four cars of coal, consigned to the complainant, have been conveyed to Greensboro by the Southern Railway Company and that said cars are now and have been on the yards of said railway company for several days, and that the agents of said company were requested by said consignees to place said cars for unloading soon after their arrival on a side track built at the expense of and by said complainant and said rail-

way company to facilitate the loading and unloading of complainant's freights; and that said consignees offered to pay the freight charges due on said cars of coal if the railway company would indicate their willingness to place them as requested by consignee; and it further appearing that the said railway company have refused to place the said cars as requested and insist that they will place said cars only on public team tracks; and it further appearing that said cars of coal can be unloaded by consignees in much less time and at much less expense on the track constructed for that purpose than on public team tracks and at no greater expense to the railway company; and it further appearing that the cause assigned by the Southern railway for its refusal to place cars as requested by consignees is insufficient, namely: That consignee refused to pay certain demurrage charged which the railway company claims accrued on
339 other cars while on public team tracks of said railway company, and which charges the consignees dispute and allege to be unjust:

It is, therefore, ordered that the Southern Railway Company upon the payment of the freights due on said cars of coal and within forty-eight hours after service of this order, place the four cars of coal consigned to the Greensboro Ice and Coal Company on tracks provided by complainant and defendant for the loading and unloading of the freights of the complainant to the end that the same may be unloaded and the complainant receive their freights.

FRANKLIN McNEILL,
Chairman N. C. Corporation Commission.

340 W. E. Worth, President. M. W. Thompson, Treas. & Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works—
"B."

GREENSBORO, N. C., *Oct.* 21, 1903.

Col. A. B. Andrews, Raleigh, N. C.

DEAR SIR: I enclose you a copy of a notice served upon this company by the agent of the Southern railway at this point, trusting that you will afford us immediate relief from the same, and desiring an expression from you as to the justice of the claim they make upon us, and your sympathy with the means taken for its collection. The facts are these: We have been endeavoring for the past two years to secure the erection of a coal trestle on land entirely outside of any right of way claims, but until recently we were unable to do this by reason of the conditions the R. R. desired to impose. A short

time ago the permission was granted to elevate the track we had been using to handle our coal. Work was commenced immediately as we wished to lay in our stock of winter coal, the tracks were torn up under R. R. instruction, we did all the necessary grading, built the trestle at our own expense, the R. R. replacing the rails.

It was impossible for us — unload the coal that came in during the erection of the trestle, as our tracks were torn up and our bins torn out, so these and our wood cars were held on R. R. sidings and not placed — our track as stated in Mr. Coffin's notice, and we agreed to unload the wood cars if they would place them on a public siding near our plant that other parties were using.

Upon completion of our trestle I was surprised to have presented a bill for $124.00 demurrage, and given to understand that I should have to pay the same or means would be taken to enforce its collection now as to the injustice of this demand, this R. R. Co., so far admit this as to state that they would remit half of the amount, but that I must pay the balance and served me with the inclosed
341 notice.

Those familiar with the facts view this as an extreme use of force methods, and lack of intention to deal justly with patrons, inasmuch as we pay out $15000 a year in freights, given the R. R. no previous trouble, and entered no suits for delay of cars or other reasons, so their is nothing back of this claim, that would warrant the resort to the present strong method.

Should there be no relief from the present means, it means that we shall ultimately quit business or pay the claim, as we handle some 200 cars a year, and use when running the plant a car and a half of wood a day, so that you see this is impracticable and would mean each year an enormous expense for hauling each year.

Had this claim been incurred through neglect on our part, instead of inability, caused by the removal of tracks, and in accord with R. R. orders, we should have paid the claim, notwithstanding the fact that the trestle is worth as much to the R. R. as to ourselves as your officials have so stated, we can handle twice as many cars as formerly and more rapidly, and the car service association will gain in a short time the amount accruing during erection of the trestle, by the rapidity by which the cars can be returned to them under present conditions over the slower method of shoveling formerly used.

I wrote Mr. Coffin that we considered the claim unjust, but were willing to pay the same if he would give the same consideration to a claim of our own, and filed with him a bill for some $1600.00 for penalty on delayed cars, and refused to pay for coal confiscated last spring. I told him it was not our intention to push these claims unless they continue to use arbitrary methods with ourselves, and that we should apply to the corporation commission for relief.

Since the inclosed order has gone into effect, four cars have come on the yard, these have been marked up to the team track according to order, they have refused to turn the same over to us and make de-

livery on our trestle as instructed. We have refused to ac-
342 cept these cars unless placed as per our instructions, and also to pay freight for same unless assurance is given that these cars will be placed as instructed.

We desire immediate delivery of these cars and are in need of same, and it has been suggested that I lay the matter before you, which I have done and trust that you will give this matter fair consideration and act accordingly. I am sir

Very truly yours, M. W. THOMPSON.

343 Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

"C." RALEIGH, *October* 26, 1903.

Col. A. B. Andrews, first vice-president, Southern Railway Company, Raleigh, N. C.

DEAR SIR: I am directed by the commissioners to enclose you copy of letter written to the Greensboro Ice and Coal Company, and to say to you that they are of the opinion that you should not refuse to switch the cars of this company after the freight has been paid, to the private siding, as desired, and they trust that you will give instructions to have the cars placed without delay.

Very respectfully, H. C. BROWN, *Clerk*.

W. W. F.
J. M. C.
C. H. A.
T. C. D.
Enc.

344 OCTOBER 26, 1903.

Mr. M. W. Thompson, manager, Greensboro, N. C.

DEAR SIR: The commissioners have had the matter of your complaint against the Southern railway in regard to demurrage charges and the failure to place cars on your private siding for unloading before them to-day.

I am directed to say that they endeavored to get Mr. Albright, manager of the North Carolina car service association, before them this morning for a conference in regard to the accumulative demurrage charges, but he is not in the city and I understand that he is now in Greensboro to see you touching the matter.

As to whether or not you are liable for the demurrage charges claimed against you, the commission cannot pass upon this until it has all of the facts before it; but as to the placing of cars on your

siding, the commission is of the opinion, with the facts presented, that if you have paid the freight, the company should place the cars on the siding as desired, and the Southern railway has been so notified.

As soon as Mr. Albright returns the matter of the accumulative demurrage charges claimed will be taken up with him.

Very respectfully, —— ——, *Clerk.*

345 EXHIBIT #4.

Filed August 27th, 1904.

Lease.

W. D. McAdoo
to
William E. Worth.

This indenture of lease made and entered into this twelfth day of February 1899 by and between W. D. McAdoo party of the first part and William E. Worth of Wilmington State of North Carolina of the second part. Witnesseth. That for the consideration hereinafter expressed the party of the first part has demised, leased and to farm let, and by these presents does demise, lease and to farm let unto the party of the second part, his executors, administrators, and assigns, all that tract of land situated in the city of Greensboro, and bounded as follows:

Beginning at the north west corner of said W. D. McAdoo's lot known as the Steel and Denny lot in the rear of the Oak Hill roller mills, about seven feet from the side track of the North Carolina railroad about five feet from the tramway of the Greensboro sash and blind factory; thence along McAdoo's line in a southerly direction one hundred and twenty seven (127) feet to a stake about five feet from the Greensboro sash and blind factory tramway; thence southeasterly seventy five (75) feet to a stake; thence easterly about fifty five (55) feet to a stake fifteen feet east of the guy post: thence northerly about one hundred and thirty five (135) feet to the land of the North Carolina railroad; thence westerly by said railroad about ninety six (96) feet to the point of the beginning.

The party of the first part grants unto the party of the second part for the time this lease shall be in operation, the right of ingress and egress through the property of the party of the first part and the Oak Hill roller mills, entering in the rear between the Oak Hill roller mills and the C. F. & Y. V. R. R.

346 To have and to hold the said above mentioned and described premises with their appurtenances for and during the term of ten (10) years, commencing February the twelfth (12) 1899, the party of the second part, his executors administrators, and assigns, yielding and paying to the party of the first part, his

heirs and assigns, each and every year during the said term hereby granted, the yearly rent or sum of two hundred and seventy five (275) dollars in equal quarterly payments to be paid every three months during said term from February the twelfth (12) 1899, viz: sixty eight dollars and seventy five cents (68.75) each and every three months, but in case of default of any one of these quarterly payments as they become due, the party of the first part may declare this lease at an end, if he sees proper so to do, after giving ten days' notice to the party of the second part, in person, and by notice plainly posted on premises covered by this lease—It is also agreed that the party of the second part shall not sublet any part of this property without the written consent of the part- of the first part, nor shall any spirituous wines or malt liquors be sold upon these premises during the term of this lease.

It is agreed that the party of the second part shall be allowed to remove within thirty days after the expiration of this lease, all buildings, fixtures, and machinery now standing on said ground, otherwise it becomes the property of the party of the first part. And it is further agreed that all buildings and fixtures now erected and upon the ground and which the party of the second part shall erect upon the premises shall be the property of the party of the second part, and at the expiration of the term of this lease the party of the second part shall be at liberty to remove the same within the above specified time, or it shall become the property of the party of the first part.

347 In witness whereof the parties have hereunto set their hands and seals the day and the year above written.

W. D. McADOO. [SEAL.]
WM. E. WORTH. [SEAL.]

Witness as to W. D. McAdoo,
W. M. JORDAN.
Witness as to W. E. Worth
C. W. WOODWARD.

348 EXHIBIT No. 5.

Filed August 27th, 1904.

Lease.

W. D. McAdoo
to
William E. Worth.

This indenture of lease made and entered into this the twelfth day of February 1891 by and between W. D. McAdoo party of the first part, and William E. Worth of Wilmington State of North Carolina of the second part. Witnesseth. That for the consideration hereinafter given the party of the first part has demised leased,

and to farm let and by these presents does demise, lease, and to farm let unto the party of the second part, his executors, administrators and assigns, all that trac*k* of land situated in the city of Greensboro and bounded as follows:

Beginning at the north west corner of said W. D. McAdoo's lot known as the Steel and Denny lot in the rear of the Oak Hill roller mills, about seven feet from the side track of the North Carolina railroad, and about five feet from the tramway of the Greensboro sash and blind factory, thence along McAdoo's line in southerly direction one hundred and twenty seven (127) feet to a stake about five feet from the Greensboro sash and blind factory tramway; thence southerly seventy five (75) feet to a stake thence easterly about fifty five (55) feet to a stake fifteen feet east of the guy post; thence northerly about one hundred and thirty five (135) feet to the land of the North Carolina railroad thence westerly by said railroad about ninety six feet to the point of beginning.

The party of the first part grants unto the party of the second part for the time this lease shall be in operation, the right of ingress and egress through the property of the first part and the Oak Hill roller mills, entering in the rear between the Oak Hill roller mills and the C. F. & Y. V. R. R.

349 To have and to hold the said above mentioned and described premises with their appurtenances for and during the term of eight (8) years, commencing February the twelfth (12) 1891, the party of the second part, his executors, administrators, and assigns, yielding and paying to the party of the first part, his heir and assigns each and every year during the said term hereby granted, the yearly rent or sum of two hundred and seventy five dollars ($275) in equal quarterly payments, to be paid every three months, but in case of any default of any of these quarterly payments as they become due every three months during said term from February the twelfth (12) 1891, vis: sixty eight dollars and seventy five cents ($68.75), the party of the first part may declare this lease at an end, if he sees proper so to do, after giving ten days' notice to the party of the second part, in person, and by notice plainly posted on premises covered by this lease—It is also agreed that the party of the second part shall not sublet any part of this property without the written consent of the party of the first part, nor shall any spirituous wines or mault liquors be sold upon these premises during the term of this lease. It is agreed that the party of the second part shall be allowed to remove within thirty days after the expiration of this lease all buildings, fixtures, and machinery now standing on said ground otherwise it becomes the property of the party of the first part. And it is further agreed that all buildings and fixtures now erected and upon the ground and which the party of the second part shall erect upon the premises shall be the property of the party of the second part, and at the expiration of the term of this lease the party of the second part shall be at liberty to remove the same within the above

specified time, or it shall become the property of the party of the first part.

In witness whereof the parties have hereunto set their hands and seals the day and the year above writen.

350 W. D. McADOO. [SEAL.]
WM. E. WORTH. [SEAL.]

Witness as to W. D. McAdoo
W. M. JORDAN.
Witness as to W. E. Worth
C. W. WOODWARD.

STATE OF NORTH CAROLINA, *Guilford County:*

The execution of the foregoing lease was duly acknowledged before me, Jno. J. Nelson, clerk of the supreme court for said county, by W. D. McAdoo the grantor thereto.
This 14th day of Sept. 1891.

J. J. NELSON, *C. S. C.*

Superior Court.

Before Jno. D. Taylor, Clerk of Superior Court.

STATE OF NORTH CAROLINA, *New Hanover County:*

The due execution by W. E. Worth of the foregoing and annexed lease between W. D. McAdoo and W. E. Worth was this the 12th day of Sept. 1891 duly proven before me by the oath and examination of C. W. Woodward the subscribing witness thereto.
Let the said deed, together with this certificate be recorded.

JNO. D. TAYLOR,
Clerk of the Superior Court.

STATE OF NORTH CAROLINA, *Guilford County:*

351 I, Jno. J. Nelson, clerk of the superior court for said county, do adjudge that the foregoing lease has been properly acknowledged and that the foregoing certificate of Jno. D. Taylor supr. court New Hanover Co. duly attested by his official seal is correct. Therefore let said deed, with the certificates be registered.
This 14th day of Sept. 1891.

JNO. J. NELSON, *C. S. C.*

Filed for registration Sept. 14th at 1:30 o'clock p. m. and duly recorded in Book 85 page- 373, 374, 375, 376.

A. G. KIRKMAN,
Reg. of Deed-.

352

EXHIBIT "F."

No. 6. Filed Aug't 27th, 1904.

Copy.

Form 627.—Sheet 1 (Revised).

Southern Railway Company.

Application for Industrial Track.

Full name of applicant, Greensboro Ice & Coal Company, incorporated under the laws of the State of North Carolina, W. E. Worth, president.

Nature of business, manufacture ice and sell coal.

(See instructions.)

Capital, $20,000.

Place of business, Greensboro, N. C.

Description of Track Wanted.

Point of connection, springing from a point on an existing track in Greensboro yard opposite M. P. C. F. 69¾.

(See instructions.)

Name of nearest station, town and county, and mile-post, Greensboro, N. C.

Direction of track, springing from point mentioned above thence 10 degree curve left 150 feet, thence tangent 225 feet in a northeasterly direction.

(See instructions.)

Length on railway right-of-way	118 feet.
" " R/W to be vested	257 "
" " public streets or roads	"
Total length	375 "

Width of R/W to be vested — feet.

Names and places of residence, town and county, of owners of lands through which track passes outside of railway right-of-way:

(Give full Christian names of husbands and wives. If owner is corporation, give names and official residence of president and secretary, and point to which deed should be sent for execution.)

.....

.....

Has authority to cross streets and roads been given? —.

(See instructions.)

Estimated new revenue to be derived by railway company per per annum, $2,500.00.

Estimated present revenue, if any, accruing to railway company per annum, 10,500.00.

If for wood or lumber, extent of standing timber in acres, —.

If for coal, ore, stone or other minerals, give volume of tonnage and annual output. —.

If for textile industry, give number of spindles, —. Looms, —. Knitting machines, —.

If for manufacturing plant, give capacity. —.

INSTRUCTIONS.

Every blank on this application must be *carefully* filled in.

Under "Full Name of Applicant" must be entered the *full* names of all members of firms, with the correct firm name, the nature of business, and capital involved.

If the applicant is a corporation, give the correct title of the corporation and the State under the laws of which the corporation is chartered. The full names of the President and Secretary of the corporation, or other officers who are to execute papers in its behalf should be given. The Christian names of individuals must be given in full.

The "Point of Connection" should be designated by giving the distance and direction from the nearest mile-post to the point of connection of the proposed track with the main line; or, if the proposed track springs from an existing side-track, the direction and distance from the point of connection of the existing side-track with the main line should be given. If such existing side-track is known by a particular name, that name should be given.

The "Direction of Track" should be designated by a description of the meanderings of the track, the length and curvatures of curves and direction. The following will serve as an example of how to fill in this information: Point of connection, 323 feet southwest of mile-post 740, Birmingham Division; nearest station or mile-post, Boccoloco, Ala; direction of track, thence by an 8 degree curve to the right and in a southwesterly direction, 445 feet; thence by a tangent in a southwesterly direction, 700 feet; total length of track, 1145 feet; distance on railway right-of-way, 300 feet; distance on right-of-way to be vested, 800 feet; distance on public road, 45 feet.

If authority to cross streets and roads has been given, such authority must be attached to this application.

This application must be forwarded in duplicate, and must be accompanied by six copies of rough sketch, or blue-prints. Blue-prints and sketches must show north point, name of nearest station of the Railway Company, and must contain the information necessary for the preparation of a description of the track as above. When track outside of railway right-of-way, the ownership of land through which the same extends should be indicated by the names of such owners, and the boundary lines of their respective properties. Proper names of all public roads or streets upon or across which track will be laid should be shown on sketch or blue-print.

It is essential that the place of residence of all parties who are to execute deeds for right-of-way should be given in order that certificates for their acknowledgment may be prepared accordingly.

It is important that applications bear date.

Form 627.—Sheet 2, Revised.

Estimated Cost of Track.

Grading 150 yards at $ 18	$27.
Switch-ties, 1 sets at $—	31.
Cross-ties, — ties at $—	
Switch points, 1 sets at $—	
Switch-stands, 1 at $—	23.0
Frogs, 1 at $—	10.0
Rail, 50 lbs. per yard, 5 1300/2240 tons at $28.00	12.0
Angle-bars, 600 lbs. at $1½	156.2
Bolts, ½ kegs at $4.00	9.0
Spikes, 3 kegs at $4.00	2.0
Clear-post, — at $—	12.0
Derailing-switches, — at $—	
Pipe, — feet at $—	
Trestling, 275 lineal feet — feet B. M. at $3.00	825.00
Labor laying track	37.50
Total estimated cost of track	$1,150.17

Basis for Construction of Track Applied For.

Applicants Will

Grade track Yes.
Furnish cross and switch-ties Yes.
Furnish culvert-pipe —.
Pay for rail, fastenings, frogs and switches, etc. No.
Pay for trestling Yes.
Pay for labor of laying track No.
Provide right-of-way for track and trestle Yes.
Light switch lamp No.

Sign Contract Containing

Business clause	Yes.	Indemnity clause	Yes.
Switch-light clause	"	Usage clause	"
Right-of-way clause	"	Termination clause	"

(See endorsements hereon for standard forms of these clauses.)

Signature of applicant, GREENSBORO ICE & COAL CO,
By WM. E. WORTH, *Pres.*
Recommended by E. H. COAPMAN, *Superintendent.*
Concurred in by GEO. G. THOMPSON, JR.,
Div. Freight Agent.

Greensboro, N. C., Sept. 5, 1902.
(Place.) (Date.)

BUSINESS CLAUSE.

That will ship, and cause to be shipped, over the lines of the Railway Company and its connections, all freights used in or about the business of the part of the second part.———; *Provided*, however, that rates are afforded said part of the second part by the Railway Company, which are not in excess of those of competing carriers for similar services performed under substantially similar circumstances and conditions.

SWITCH-LIGHT CLAUSE.

That will, at own exclusive cost and expense, provide a tender for such switch-lamp as may be established by the Railway Company as aforesaid, and will properly maintain the said switch-lamp, keeping the same always lighted at night for the guidance of the employees of the Railway Company in the operation of its trains during the continuance of this agreement.

INDEMNITY CLAUSE.

That will indemnify and save harmless the Railway Company against any and all damage resulting from negligence of the party of the second part, servants and employees, in and about said industrial track and the right of way therefor; and furthermore against any and all claims, demands, suits, judgments and sums of money accruing for loss or damage by fire communicated by locomotive engines or trains of the Railway Company to buildings used by the party of the second part in connection with the business served by said industrial track, or to the contents of such buildings, or to other property stored by or with the consent of the party of the second part upon or near said industrial track. The Railway Company hereby stipulates for this protection as a condition of its agreement, herein expressed, to afford the above described terminal services and facilities to the party of the second part elsewhere than at its regular station.

USAGE CLAUSE.

That the Railway Company shall have entire control of said industrial track and the operation thereof, and may use the same as well for the business of third persons, not parties hereto, as for that of the part of the second part hereto; *Provided*, however, that such use of said industrial track for the benefit of third persons shall not unreasonably interfere with the business of the part of the second part.

RIGHT-OF-WAY CLAUSE.

That before there shall be any obligation on the part of the Railway Company to begin the construction and operation of said industrial track, the part of the second part will, at own cost and expense, cause to be vested in the Railway Company by good and sufficient deeds of the lawful owners of the lands through which said industrial track is intended to pass, as shown upon said blueprint, a good marketable title, free of encumbrances, to a right-of-way therefor, outside of the limits of the present right-of-way of the Railway Company, of sufficient width, in the judgment of the Railway Company, for the safe and convenient construction of said industrial track, and the operation, maintenance and repair thereof by the Railway Company; *Provided*, however, that such deeds of conveyance shall be upon the expressed condition that, in the event that the said track shall be abandoned, and in evidence thereof, the operation of the same shall be discontinued and the Railway Company shall no longer require such right-of-way for said industrial track, then and in such event the title to said right-of-way, so vested in the Railway Company, and all rights incident or appurtenant thereto, shall revert to such grantors, their heirs, successors or assigns.

TERMINATION CLAUSE.

And it is Mutually Covenanted and Agreed:

That either party hereto may terminate this agreement at any time hereafter, but upon sixty (60) days' notice, in writing, to the other, of the intention so to do; in which event, upon the taking effect of such notice, the Railway Company may discontinue the operation of said industrial track, and remove its property, including all fixtures, therefrom, and from the right-of-way appurtenant thereto.

"H."

4

9-'04. 2½ M. EXHIBIT No. 7.

Filed August 27th, 1904.

GREENSBORO ICE & COAL CO.
v.
SOUTHERN R'Y.

Statement Showing Movement of Southern R'y Car 70734, *C. & O. Car* 17895, *N. & W. Car* 12565, *and N. & W. Car* 23283.

Southern Ry. car 70734:

So. Ry.

Tenn. Newcomb 10/11/03 to Greensboro, 10/18/03.
Greensboro to Spencer, 11/16/03.
Sworn to by R. L. SPROUL,
Car Accountant, So. R'y.

C & O car 17895:

C & O Ry.

Car loaded by Scranton Splint Coal Co.
W. Va. Handley to Lynchburg 10/13/03.
(Signed) "G. S. SIPP,
By W. H. W. MASON."

So. Ry.

Lynchburg to Greensboro, 3:50 p. m., 10/19/03.
Greensboro to Danville 1:00 a. m., 11/16/03.
Sworn to by R. L. SPROUL,
Car Accountant.

N & W car 12565:

N & W Ry.

W. Va. From Elkhorn Coal & Coke Co. to Flat Top, 10 p. m., 10/12/03.
" Flat Top to Winston-Salem, 5 p. m., 10/17.
J. R. TALBOTT,
Car Accountant.

(Sworn to.)

So. Ry.

From Winston-Salem to Greensboro, 8:25 a. m., 10/18/03.
Greensboro to Winston-Salem, 11:10 p. m., 11/15/03.
Sworn to by R. L. SPROUL,
Car Accountant.

N & W car 23283:

D. L & W R R.

Penn. From P. R. R., at Naticoke Oct. 5th. to Plymouth for placing at Gaylord colliery, distance of 3 miles.
From telegram of T. E. Clark.

Pennsylvania R. R.

From D L & W R R to West Nanticoke 10 / 8 / 03.
Honey Pot to Bridgeport, 10 / 13 / 03.
Sworn to by JOHN H. SIEGLER,
Night Foreman Car Record of C. V. R. R.

Bridgeport to Hagerstown 10:35 p. m., 10 / 14 / 03.
Sworn to by WILLIAM L. HEYSER,
In Charge Car Records.

N & W Ry.

Md. Hagerstown to Winston-Salem 10 / 20 / 03.
Sworn to by J. R. TALBOTT,
Car Accountant.

So. Ry.

Winston-Salem to Greensboro 5 a. m. 10 / 22 / 03.
Greensboro to Spencer, 9:15 a. m., 11 / 18 / 03.
Sworn to by R. L. SPROUL,
Car Accountant.

(Here follow fac-similes marked pp. 355 to 368, inclusive.)

		arrive	Paid Frt.	
Kirk	12565	Oct 19	19/27	6888
Saw	20734	"	"	7520
Coo	17895	Oct 20	"	7440
Saw	9281 Wood	"	21	600
Kirk	23280 Coal	"	22	1212
Coo	18747 "	"	24	7153
				41713

Filed 20 Oct 1905 - 27 Nov

242

No 1114.

Greensboro Ice and Coal Company

Greensboro N.C. Oct 27 1903

The City Nat'l Bank

Paid
Oct 28 1903

Pay to the order of W. E. Coffin Agt $ 417.13/

Four Hundred Seventeen and 13/100 Dollars

To the City National Bank
Greensboro.
N.C

Greensboro Ice and Coal Company.
M. W. Thompson
Treas.

417.13

Pay to the order of

The Greensboro Nat. Bank.

Greensboro. N. C.

Southern Railway Company

H E Coffin Sec't

Paid

Oct 28 1903

The Greensboro Nat Bank

Greensboro. N. C.

243

FREIGHT BILL.

Form ~~1610~~ 1888

Consignee Greensboro Dock Co Station Greensboro NC ~~190~~

St address Pro Number Date Oct 19 1903

Destination 4390 ~~via~~

~~Pro.~~

To SOUTHERN RAILWAY COMPANY,

For charges on articles way-billed from Bluefield W Va. via

Date of Way-Bill,	ARTICLES AND MARKS.	WEIGHT.	RATE.	Freight and Advances.
10/15 1903	Run Coal	59900	230	68 88
Number of Way-Bill, 8812				
Car Number and Initials NOCW 12565				
Consignor, Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment, CC & B				

Received Payment _____ 190__ Drayage, - -

Agent, Total to collect,

Per _____ Cashier.

357

FREIGHT BILL.

Form ~~1649.~~ 1858

Consignee Greensboro D & Co. Station Greensboro N.C. 190

St Address Pro Number Date Oct 19- 1903

Destination 4386 via

Door

To SOUTHERN RAILWAY COMPANY,

For charges on articles way-billed from Newcomb via

214

Date of Way-Bill,	ARTICLES AND MARKS.	WEIGHT.	RATE.	Freight and Advances.
10/10 1903	SR Coal	64000	235	75 20
Number of Way-Bill, 171				
Car Number and Initials So - 70736				
Consignor, Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment, JS 2960				

Received Payment W E Coffin 190

Agent,

Per Cashier.

Drayage, - - 75 20

Total to collect, 75 20

Agent,

Per

Cashier.

Drayage, - -

Total to collect,

245

FREIGHT BILL.

Form 1649.

Consignee Glbons R Fuelbg Station Greenbrs KE ~~190~~

St address Pro number Date 10/20 1903

Destination 4716 ~~via~~

~~Pro~~

To SOUTHERN RAILWAY COMPANY,

For charges on articles way-billed from Lyb'g via

Date of Way-Bill,	ARTICLES AND MARKS.	WEIGHT.	RATE.	Freight and Advances.
10/14 1903	Coal	62000	240	74 40
Number of Way-Bill, 3516	"			
Car Number and Initials RoO 17895				
Consignor, Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment, Pratt				

246

FREIGHT BILL.

Form ~~1617.~~ 1888

Consignee Gboro Lee & Co Station Greensboro N C ~~190~~

St address Pro number Date 10/24 1903

Destination 5033

~~Pro.~~

To SOUTHERN RAILWAY COMPANY,

For charges on articles way-billed from Greensboro via

Date of Way-Bill,	ARTICLES AND MARKS.	WEIGHT.	RATE.	Freight and Advances.
10/20 1903	12 cds wood	36 exp	5.07	6 00
Number of Way-Bill, 35 8 C				
Car Number and Initials So 9281				
Consignor, Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment, f X Ross P Gurney				

Received Payment W S Coffin 190

Agent,

Per

Drayage, - -

Total to collect, 60

FREIGHT BILL.

Form 1889.1888

Consignee

Pro number 8821. 10-22 190

247

Destination via

Pro. Received in good order from the SOUTHERN RAILWAY COMPANY,

~~The following~~ ~~For charges on~~ articles way-billed from Hoyt via

Date of Way-Bill,	ARTICLES AND MARKS.	WEIGHT.	RATE.	Freight and Advances.
10/11 190			180	50 94
Number of Way-Bill,	Coal	63392	248	70 18
6172			1	21 12
Car Number and Initials	Duplicate			
NOW 23280	10/27			
Consignor, Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment,				

Received Payment W. S Coffin 190

Agent,

Per Cashier.

Drayage, - -

Total to collect,

FREIGHT BILL.

Form ~~1649~~ 1888

Consignee Gboro Ice & Coal Co Station Greensboro NC ~~190~~

St address Pro number Date 10/14 190

Destination 5637 ~~via~~

~~Due~~

To SOUTHERN RAILWAY COMPANY,

For charges on articles way-billed from Ly by via

Date of Way-Bill,	ARTICLES AND MARKS.	WEIGHT.	RATE.	Freight and Advances.
10/14 1903				
Number of Way-Bill, 3555	Coal	59600	240	71 53
Car Number and Initials PRR 18747	✓			
Consignor, Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment,				

Received Payment W E Coffin 190

Agent,

Per Cashier.

Drayage, - -

Total to collect,

Weighed at
Date
Gross Weight
Tare Weight
Net Weight

SOUTHERN RAILWAY COMPANY.

Way-Bill Form (No. 40 4976 To N. Greensboro Date 10/14
Via Brk. Bulk at
Weigh this Car at Time Loaded † Person in Charge †

436

~~10 CT. 2 CWT.000 C~~

~~CONSIGNOR, ORIGINAL POINT SHIPMENT, ETC.~~

~~WAY BILL REFERENCE~~

~~Number Waybill~~	~~Name of Carrier~~	~~Date R. W. B.~~	~~No. of Waybill~~	~~Way Bills from~~	~~Way Billed To~~
Pratt					
Ly 10/4					

Consignee and Final Destination

Greensboro

Number and Description of Articles

R V Fur Co

R Om Coal

Auditor's Class No.

9

Weight

67

Enter on all Way-Bills Letter and Number of all Special Rates used. Where rates are named by telegram or letter, give date and by whom signed. No verbal authority for rates must be recognised.

INSTRUCTIONS FOR SHIPPING LIVE STOCK.—†Use these spaces for Live Stock shipments only. Give ... animals must be unloaded, watered and fed within 28 consecutive hours at expense of owner, and be rested at ...

SOUTHERN RAILWAY COMPANY.

Form 2560.

40 L 4 19 16 To N. Greensboro Date 10/14 1903.

Broken Bulk at

Time Loaded † Person in Charge † Mc 10/14

Way-Bill Series and No. 2516

Car Initial 600 No. 17595

Capacity of Car

Transferred into

Initial No. At

Stenciled Capacity of Car

Way-Bill No.	Consignee and Final Destination	Number and Description of Articles	Auditor's Class No.	Weight	Class	Rate	Charges	Freight	Total Charges and Freight	Total Prepaid
	Greensboro	R & Fur Co	9	67000	D	102				
						138		4778	4716	
		R & M Coal				3162		7440		

393

† rates are named by telegram or letter, | INSTRUCTIONS FOR SHIPPING LIVE STOCK.—†Use these spaces for Live Stock shipments only. Give exact time loaded. U. S. Law, Section 4386, provides that cattle, sheep, swine and other animals must be unloaded, watered and fed within 28 consecutive hours at expense of owner, and be rested at least 5 consecutive hours. BE GOVERNED ACCORDINGLY.

Weighed at
Date 10/12/03
Gross Weight 88500
Tare Weight 28300
Net Weight 60500

4-12-05-3,000,000—S.

SOUTHERN RAILWAY COMPANY.

Way-Bill from (No. 448) Newcomb T To (No. 171) Greensboro Date 10/1

Via

Break Bulk at NC.

Weigh this Car at Time Loaded † Person in Charge †

Initials etc.	Name of Carrier	Date of B/L	For or Prepaid	Stop Billed From	Stop Billed To	Consignee and Final Destination	Number and Description of Articles	Auditor's Class No.
SRB&YCCo						Greensboro Dabo	Coal	09

Enter on all Way-Bills Letter and Number of all Special Rates used. Where rates are named by telegram or letter, give date and by whom signed. No verbal authority for rates must be recognised.

INSTRUCTIONS FOR SHIPPING LIVE STOCK.—†Use these spaces for Live Stock shipments only. animals must be unloaded, watered and fed within 28 consecutive hours at expense of owner, and be rest

SOUTHERN RAILWAY COMPANY.

Form 2752. Way-Bill Series and No. Ans 171

Car Initial SOU No. 70704

Stencilled Capacity of Car

Transferred from

Initial No. No.

Stencilled Capacity of Car

No. 448 Newcomb T To (No. 171) Greensboro Date 10/10 1903

Break Bulk at UC

Time Loaded† Person in Charge†

Consignee and Final Destination	Number and Description of Articles	Auditor's Class No.	Weight	Class	Rate	Charges	Freight	Total Charges and Freight	Total Prepaid
Greensboro Dobo	Coal	09	64 000		235				

Spencer Yard 190 Oct 17 7520 Received C J Adams Yadkin & Kuxwell Ry

364

...e rates are named by telegram or letter, ...d.

INSTRUCTIONS FOR SHIPPING LIVE STOCK.—†Use these spaces for Live Stock shipments only. Give exact time loaded. U. S. Law, Section 4386, provides that cattle, sheep, swine and other animals must be unloaded, watered and fed within 28 consecutive hours at expense of owner, and be rested at least 5 consecutive hours. BE GOVERNED ACCORDINGLY.

Great Southern Despatch - Fast Freight - South @ So
P.R.R.. C.V. Norfolk & Western. S. Ry. and Connecti

From Hagerstown. Md., Trans to Greensboro N.C. 10/11 1903

Point of origin	Consignee and destination	Description of articles	Weight	G.S.D. Rate
Garland Mine	Greensboro Ice & Coal Co Greensboro N.C.	Coal 29-06	69892	248/2240
Mfst Nro 15195				
Date 10/8				
Mfst No 5 Jos Nagle Statement Trip				Via Wins

716

Great Southern Despatch - Fast Freight - South & Southwest P.R.R., C.V. Norfolk & Western R. Ry. and Connections

Manifest No S 6172

Initial Ry No 23783

Rd., Trans to Greensboro N.C. 10/11 1903

Consignee and destination	Description of articles	Weight	G.S.F. Rate	G.S.F. Freight	Expenses paid	To be collected	Total Thro Rate	
Greensboro Ice & Coal Co Greensboro N.C.	Coal 29-06	63892	248/2240	70 18	5094	121,12	(478)	12,12

Via Winston

365

Norfolk and Western Railway Co. Line Initial Road Initial N&W Car no 12
Inter-line Ways Bill Bluefield To Greensboro N.C. Date 10/15 -
Route Via Winston & Dan

Consignor	Consignee & destination of article	Weight	Division of Rates	Freight	Total
C.C & O	Greensboro Dee & Coal Co Rom Coal	59900	2-30	6888	688

Railways Co. Line Initial Road Initial N&W Car no 12665 W.B. No 8812 Thro Rate
Bluefield To Greensboro N.C. Date 10/15 1903
Simplon & DW

Consignee & Destination of articles	Weight	Division of Rates	Freight	Total
Greensboro Dee & Coal Co	59900	2-30	6888	6888

Run Coal

No. 370.
McNeill et al
vs
So. Ry Co.
} p. 367.

South.

PROPOSED CHANGE OF SIDING WANTED BY
GREENSBORO ICE & COAL CO.,
Scale: 1"=20'

GREENSBORO ICE & COAL CO.'S
PROPERTY.

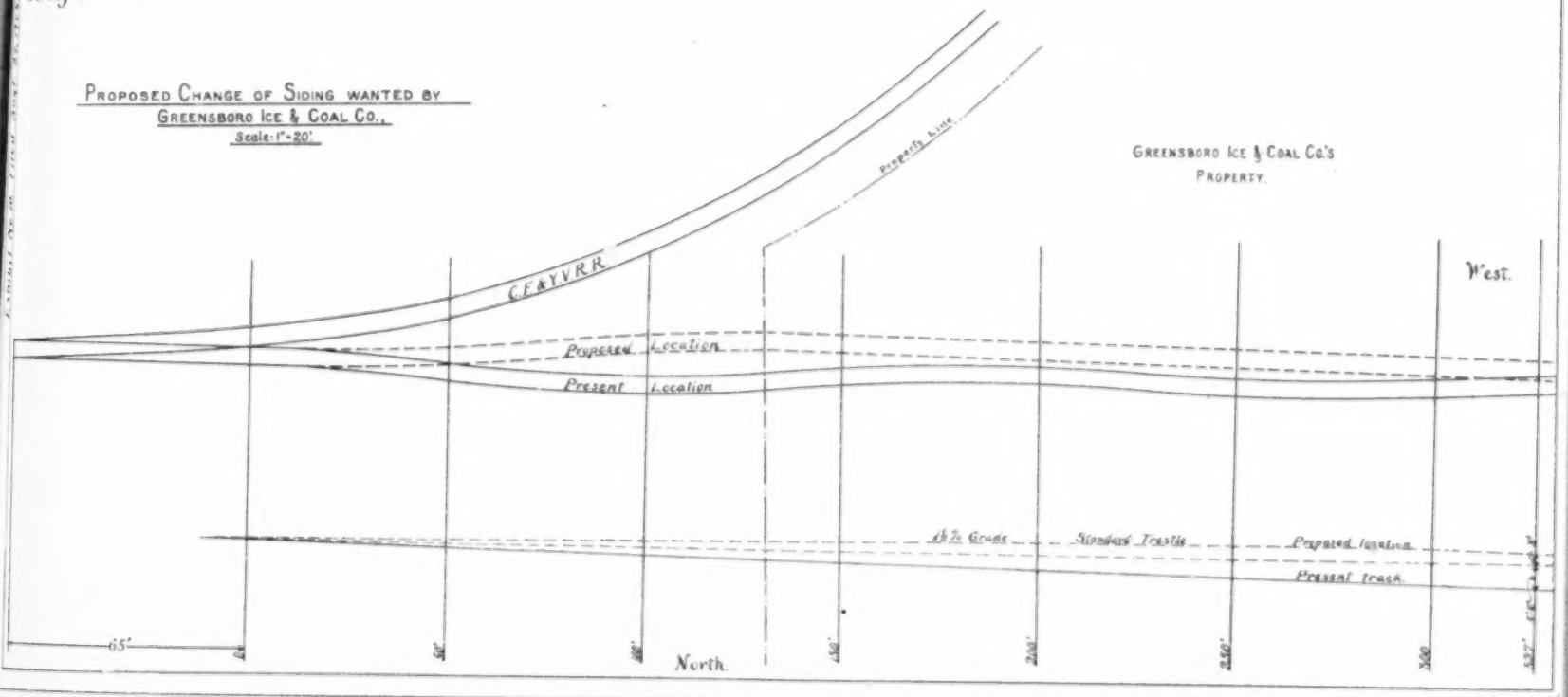

Exhibit No. 14 filed Sept. 26, 1905

Exhibit "B"

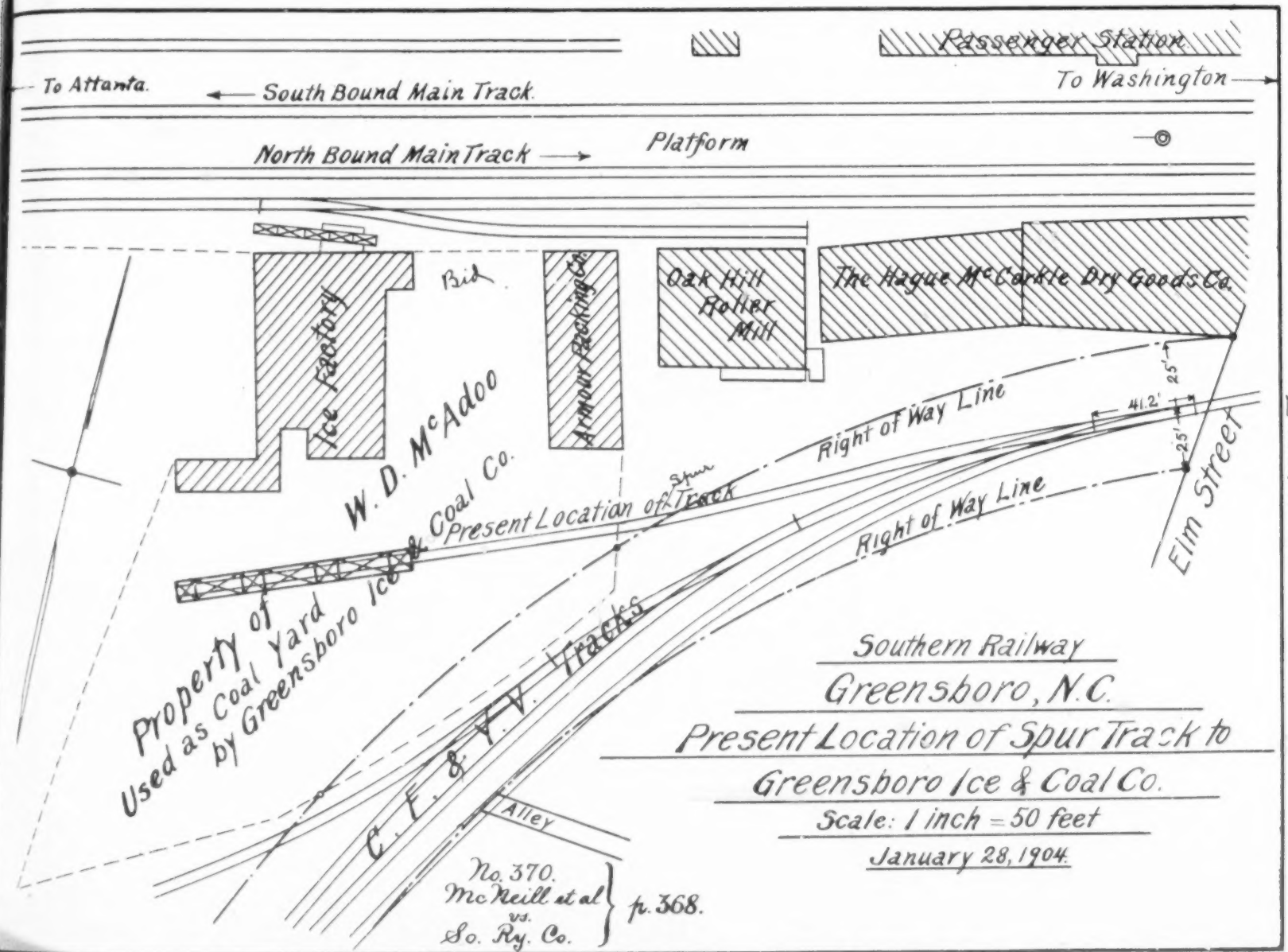

Exhibit No. 11.

369 "2."

EXHIBIT No. 12.

Before the North Carolina Corporation Commission.

STATE OF NORTH CAROLINA on the Relation of the North Carolina Corporation Commission upon complaint of GREENSBORO ICE AND COAL COMPANY *vs.* SOUTHERN RAILWAY COMPANY.

Be it remembered that on the 24th day of October, 1903 the Greensboro Ice and Coal Company filed complaint as follows:

370

W. E. Worth, President. M. W. Thompson, Treas. and Mgr.

The Greensboro Ice and Coal Company,

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *October* 20, 1903.

The Hon. Franklin McNeill, chairman corporation commission, Raleigh, N. C.

SIR: I enclose you a copy of a notice recently served upon me by the agent of the Southern railway at this point, and I desire to present the facts to you trusting that you can afford us the necessary relief. We have been endeavoring for the past two years to secure the erection of a trestle to facilitate handling the quantity of coal we use, but we were unable to do this until just recently when permission was granted to elevate the track we had been using for unloading our cars. The rails were removed under railroad instructions, we built the trestle at our own expense, and did the necessary grading ourselves, the R. R. company replacing the rails.

I proceeded with the erection of the trestle immediately upon receipt of permission as the cool weather was coming on and we wished to get in our stock of coal, and coal that was on the road and coming in on standing order it was impossible for us to handle, as the track had been torn up, and it was held on R. R. sidings and not placed on our track as stated in letter.

Upon completion of the trestle, I was surprised to have presented a bill for $124.00 per demurrage on cars that had never been placed, and I was given to understand that I should have to pay the same or

means would be taken to enforce a settlement, notwithstand-
371 ing the fact that we agreed to unload some of these cars if they would place them on a siding near the plant that was being used by other parties and was a public team track, which they did not do.

As to the injustice of their demand, they so far admit this as to state they will remit half of the demurrage, but that I must pay the balance and served me with the inclosed notice.

Should there be no relief from this force method, it means that we shall have to go out of business or pay their claim, as we handle some 200 cars a year, and when running the plant, it takes over a carload of wood a day, so that you see this is impracticable, and would mean our maintaining a regular hauling force at a cost of over a thousand dollars a year. Viewing the proposition in another light, that had we run up this bill through neglect instead of inability for which the R. R. was responsible as the tracks were torn up by their instructions, they should still have shown a sufficient amount of liberality to have withheld any such claim, as one of the officials here stated that he considered the trestle worth more to the R. R. than to this company, as we can handle twice the number of cars at a time, and the car service association will gain in a short time the amount lost on their cars, by the rapidity with which they can be returned to them.

Those familiar with the facts, view this as an outrage, is as much as we have been giving them about $15,000 a year in freights, giving them no previous trouble, entering no suits for delay of cars, so there is nothing back of the claim, and I trust that you may see this in the same light. I would state that similar action has been taken with other parties for an amount of $2.00 claimed from last spring.

Since the enclosed order has gone into effect there have
372 been four cars come on the yard, which have been marked up for team track according to order, and they have refused to turn the same over to us and make delivery on our trestle as instructed. We have refused to accept the cars unless placed as per our instructions, and also to pay freight for same unless assurance is given that these cars will be placed as instructed. We desire immediate delivery of these cars, and are in need of same, and I trust that you will use all means in your power to effect this, and write me instructing us as to our positions in the matter.

I am,

Yours very truly,

M. W. THOMPSON.

Southern Railway, Office of ——.

GREENSBORO, N. C., *Oct.* 12, 1903.

Greensboro Ice & Coal Company, Mr. M. W. Thompson, mgr.

DEAR SIR: Please take notice that commencing 12:00 noon Oct. 15th, 1903, this company will decline to switch any cars to your private siding, in the yards of your company at Greensboro, N. C.,

ll only make delivery to you on the public team track of this
ay in the yards at Greensboro, N. C. This action is made
ry by reason of your refusal to comply with our car service
ions declining to pay reasonable charges for the use of cars
ve been detained before unloading on your private track above
referred to and that we find it necessary for the protection of
our equipment to tender you further deliveries upon tracks
where cars may be under our immediate supervision and

(Signed) Agent W. E. COFFIN,
Southern Railway Co.

artment of the North Carolina Corporation Commission.

klin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Oct. 24th*, 1903.

W. Thompson, treasurer, Greensboro Ice Company, Greens-
, N. C.

R SIR: Your letter in regard to switching of cars to your pri-
ding by the Southern railway received and the commission
vise you Monday as to such action as may be taken.

Very respectfully,
(Signed) H. C. BROWN, *Clerk.*

E. Worth, President. M. W. Thompson, Treas. & Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

ks locate- opposite new Southern depot.

GREENSBORO, N. C., *October* 24, 1903.

Franklin McNeill, chairman corporation commission, Raleigh,
.

R SIR: I wrote you on the 20th in reference to the embargo
ad been placed on this company by the Southern Ry. Co. by
of our failure to pay claim for cars that were not placed
his company was building a trestle I have just seen a copy of
murrage rules issued by the commission in effect July 1st. and
ordance with same my refusal to pay claim is justified.

First. Notice was not served upon us in strict compliance with rule 1, we simply being furnished with car numbers.

Secondly. Rule 3 states, that demurrage charges shall commence 48 hours after cars are placed at an accessible point, these cars were held on railroad yard, and were never placed at an accessible point until they were delivered on our trestle, and no request made of us to designate a place otherwise where we would receive them, and all cars were unloaded in three or four hours after being placed on trestle, and kept an extra force to do this to assist the railroad and give them the empties as soon as possible.

Third. Besides being a party to the claim, they are serving as judge of the same also, and passed upon us a rule that will cripple our business or make us pay the claim, and the means employed is, I believe, in defiance of the intentions of rule 8.

Rule 7 states that for loading a car shall be placed at an accessible point on team track or private track designated by the shipper.

375 I should like to have you write me whether it is not the intention in rule 8 is not the same for unloading cars. Where parties have private tracks the placing of cars on the same is as essential for unloading as for loading, though rule 8 uses the term "accessible place," and not the qualification of rule 7.

Won't you kindly write me at once if the matter is receiving attention, we have cars on the yard that we are needing badly, and they refuse to place them on our yard as we designate, and I pray that you act at once in this matter and have instructions issued or means used to have this unjust ruling removed.

I will thank you as requested above to give me your ruling as to term 'accessible place' in rule 8, and also furnish me with a copy of the regulations or rules as issued as the copy I have is a borrowed one.

Very truly yours,
(Signed) M. W. THOMPSON.

North Carolina Corporation Commission.

RALEIGH, N. C., *Oct. 26th*, 1903.

Col. A. B. Andrews, first vice-president, Southern railway, being present, the matter of the complaint of the Greensboro Ice and Coal Company is discussed.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Oct. 26th*, 1903.

376 Mr. M. W. Thompson, manager, Greensboro, N. C.

DEAR SIR: The commissioners have had the matter of your complaint against the Southern railway in regard to demurrage

harges and the failure to place cars on your private siding for loading before them to-day.

I am directed to say that they endeavored to get Mr. Albright, manager of the North Carolina car service association, before them this morning for a conference in regard to the accumulative demurrage charges, but he is not in the city, and I understand that he is now in Greensboro to see you touching this matter.

As to whether or not you are liable for the demurrage charges claimed against you, the commission cannot pass upon this until it has all of the facts before it; but as to the placing of cars on your siding, the commission is of the opinion, with the facts presented, that if you have paid the freight, the company should place the cars on the siding as desired, and the Southern railway has been so notified.

As soon as Mr. Albright returns the matter of the accumulative demurrage charges claimed will be taken up with him.

Very respectfully,

(Signed) H. C. BROWN, *Clerk.*

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.

H. C. Brown, Clerk.

RALEIGH, *Oct. 25th*, 1903.

377 Col. A. B. Andrews, first vice-president Southern Railway Company, Raleigh, N. C.

DEAR SIR: I am directed by the commissioners to enclose you copy of letter written to the Greensboro Ice and Coal Company, and to say to you that they are of the opinion that you should not refuse to switch the cars of this company after the freight has been paid to the private siding as desired, and they trust that you will give instructions to have the cars placed without delay.

Yours respectfully,

(Signed) H. C. BROWN, *Clerk.*

Enc.

378 W. E. Worth, President. M. W. Thompson, Treas. & Mgr.

Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *Oct. 27th*, 1903.

Mr. H. C. Brown, Clerk, Corporation Commission, Raleigh, N. C.

DEAR SIR: I am in receipt of yours of yesterday, stating that the Southern railway at this point has been notified that cars should be delivered on our siding as requested. We have paid freight on cars of which there are seven now but up till five o'clock this p. m. no instructions had been issued as to their being placed, I trust, however, this will be done shortly. The shippers at this point are very much interested in this decision, as the same means have been threatened in other instances, and their representative Mr. Schenck told me last night that they considered it their privilege to adopt this means to collect claims whenever they saw fit. Refusing delivery on private tracks is exercising a lien, and while there has been no decisions I think in this State, the courts of Ohio, and the supreme court of Illinois have decided that a lien can only be exercised in case of refusal to pay freights, that a carrier can only collect any demurrage charge by process of law.

In the present instance I shall be glad for the commission to settle this question, as I feel that under the facts and ruling formulated by the commission they will render me a favorable decision, and I shall be glad to render any further information the commission may desire. I am,

Very truly yours, (Signed) M. W. THOMPSON.

379 W. E. Worth, President. M. W. Thompson, Treas. & Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *Oct. 28th*, 1903.

Hon. Franklin McNeill, chairman corporation commission, Raleigh, N. C.

DEAR SIR: In regard to our case before your honorable body I understand that Mr. Albright will defend the railroad's action in re-

fusing to deliver subsequent cars from those upon which the original bill of demurrage was claimed, was by reason of the fact that we agreed to pay this original bill in order to have the cars placed and then refused afterwards. I desire to state that we have maintained throughout exactly the same attitude in this matter, that we never intimated that we would pay over the money for this claim, and I desire to make this statement to the commission, and we could not expect much sympathy from you if our case had come before you in this light. Mr. Albright has stated our case as above to another party, and I have written him that he was misinformed by the agents, at this point, and the agent has just admitted to me that he believed we had maintained the same position throughout this matter. At this six p. m. no instructions have been *been* given as to the placing of our cars. It seems as though this matter being in your hands the R. R. would not continue to force a settlement otherwise, and after your notifying them they should be placed. We need these cars badly and have been unable to fill our orders, by reason of not receiving them. Trusting that you — be able to afford us this relief
380 shortly, I am,

Yours truly, (Signed) M. W. THOMPSON.

North Carolina Corporation Commission.

RALEIGH, *Oct. 29th*, 1903.

P. R. Albright, manager, North Carolina car service association, representing defendant, appears before the commission and is heard in the matter of the complainant of Greensboro Ice and Coal Company *vs.* The Southern Railway.

Telegram.

GREENSBORO, N. C., *Oct. 31st*, 1903.

Hon. Franklin McNeill, Corporation Commission, Raleigh, N. C.

Railroad continues refusing delivery cars without relief. Must suspend business. Advise action.

GREENSBORO ICE AND COAL COMPANY.

381 *Telegram.*

Reply.

RALEIGH, *Oct. 31st*, 1903.

Greensboro Ice and Coal Company, Greensboro, N. C.

Order issued directing placing cars within 48 hours. Tender freight charges.

FRANKLIN McNEILL, *Chairman.*

382 Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam'l Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, N. C., *Oct.* 31*st.* 1903.

THE GREENSBORO ICE AND COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

This cause coming on to be heard upon complaint and after notice to the defendant and an appearance by them, and it being made to appear to the commission by the plaintiff that four cars of coal, consigned to the complainant, have been conveyed to Greensboro by the Southern Railway Company and that said cars are now and have been on the yards of said railway company for several days, and that the agent of said company *were* requested by said consignees to place said cars for unloading soon after their arrival on a side track built at the expense of and by said complainant and said railway Co. to facilitate the loading and unloading of complainant's freights. And that said consignees offered to pay the freight charges due on said cars of coal if the railway company would indicate their willingness to place them as requested by consignees, and it further appearing that the said railway company have refused to place the said cars as requested and insist that they will place said cars only on public team tracks, and it further appearing that said cars of coal can be unloaded by consignees in much less time and at much less expense on the track constructed for that purpose than on public team tracks and at no greater expense to the railway company, and it further appearing that the cause assigned by the Southern railway for its refusal to place cars as requested by consignees is insufficient, namely: That consignees refused to pay certain demurrage charges which the railway Co. claims accrued on other cars while on public team tracks of
383 said railway company, and which charges the consignees dispute and allege to be unjust:

It is, therefore, ordered that the Southern Railway Co. upon the payments of the freights due on said cars of coal and within forty-eight hours after service of this order, place the four cars of coal consigned to the Greensboro Ice & Coal Company on tracks provided by complainant and defendant for the loading and unloading of the freights of the complainant to the end that the same may be unloaded and the complainant receive their freights.

FRANKLIN McNEILL.
Chairman N. C. Corporation Commission.

Served on A. B. Andrews, first vice-president, Southern railway, at 11.50 o'clock a. m., Saturday morning Oct. 31st, 1903, by reading to him and leaving with him copy of within order.

This Oct. 31st, 1903.

H. C. BROWN,
Clerk North Carolina Corporation Commission.

384 Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Nov. 2nd*, 1903.

Mr. M. W. Thompson, manager Greensboro Ice and Coal Company, Greensboro, N. C.

DEAR SIR: The commission wired you on Saturday that the Southern railway had been ordered to place the cars on your siding within 48 hours. This time will expire on Tuesday at noon. If the cars are not placed by that time, please advise the commission.

Very respectfully,
(Signed) H. C. BROWN, *Clerk.*

Telegram.

Nov. 3, 1903.

28 RD AN K. 10 Paid. 1.30 pm.

GREENSBORO, N. C., *3rd Nov.*, 1903.

Hon. Franklin McNeill, corporation commission, Raleigh, N. C.:

Cars unplaced no orders issued — freight paid one week ago.

GREENSBORO ICE & COAL CO.

385 Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, N. C., *Nov. 3rd*, 1903.

Greensboro Ice and Coal Company, Greensboro, N. C.

GENTLEMEN: The commissioners are in receipt of your telegram and I am directed to say that they will bring suit for the penalties in regard to the failure to obey the order of the commission, as the law provides.

Very respectfully,
(Signed) H. C. BROWN, *Clerk.*

W. E. Worth, President. M. W. Thompson, Treas. & Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *Nov.* 3, 1903.

Hon. Franklin McNeill, chairman corporation commission, Raleigh N. C.

DEAR SIR: I received your wire of Oct. 31st, "Order issued directing placing cars within forty-eight hours tender freight
385 charges," and your letter of Nov. 2, requesting advice if cars were placed by this day noon. I have just wired you "Cars unplaced no orders issued freight paid one week ago." I paid the freight on all cars received up to Oct. 27 immediately upon receipt of your letter of the day before stating that it was your opinion that these cars should be placed as directed. Since that time I have since paid freight bills as presented in the usual manner, and this morning went to the office and settled a few more bills everything they had to date.

At 11:30 a m. I was called up by the Southern, in reference to another matter, and told that these cars would not be delivered on our private siding until the original claim was paid, and that cars would not be offered on team track unless assurance would be given that they would be unloaded, as we have now some 17 cars hung up you can readily understand the impracticability of our undertaking to do business under the restrictions they have imposed upon us. We have been unable to fill some wood and coal orders by reason of lack of certain grades, which are held here on the yard.

Trusting you will use all your power to relieve the situation, I am,

Very truly yours,

(Signed) M. W. THOMPSON.

387 *Exceptions.*

To the honorable the North Carolina corporation commission, Raleigh, North Carolina.

The Southern Railway Company, a corporation existing under and by virtue of the laws of the State of Virginia, files with your Hon. board, its exceptions to the particulars that it objects to your order, or judgment, of date October 31st, A. D., 1903, relative to the placing of the four cars of coal involved upon the private track of the Greensboro Ice & Coal Company in Greensboro, North Carolina, and states the grounds thereof as follows:

Exception No. 1. That the side track of the Greensboro Ice & Coal Company is the private property of that company with the exception of the rails, and is under the control of that company and built by that company for its own use and convenience; and not for the use or convenience of the Southern Railway Company, that to make the said side track more useful and profitable to said coal & ice company, that company caused the track to be gradually raised so that cars of coal could be dumped into bins made under said track with the least inconvenience to the said coal & ice company; that during the construction of this work, and with no default on the part of the Southern Railway Company, certain demurrage charges accrued, under order No. 36, rules of your honorable board, on five car-loads of coal and on eight carloads of wood, amounting in all to one hundred and forty-six dollars ($146.00) and under promise to pay said amount, upon which the Southern Railway Company relied and acted, the said coal & ice company induced the Southern Railway Company to place the said car loads of coal and wood upon the said private side track, and said coal & ice company have since refused to pay said demurrage charges, though several times requested and de-
388 manded by the Southern Railway Company to do so; that the Southern Railway Co. thereupon refused and still refuses to place any more cars of freight upon the private side-track of the coal & ice company, and to extend to them credit or part with their legal lien upon the four car-loads of coal ordered placed by your honorable board, or with their legal lien upon any goods, wares or merchandize, until all freight, demurrage or other charges have been fully paid, which the said railway company submits it has the right to do.

Exception No. 2. That the Southern Railway Company is ready and willing, and has repeatedly offered to place said four cars of coal and other cars of merchandise accessible on its public team, or delivery tracks in the city of Greensboro, N. C., and has placed said cars accessible as aforesaid, but the said coal & ice company refuses to so receive them. The Southern Railway Company contends and insists that the said coal & ice company has not any superior right to the delivery of their goods, wares and merchandise, and that it is justified in refusing to place cars of coal and ice company upon its private siding or tracks, and thus part with their property.

Exception No. 3. That the said order or judgment herein excepted to is contrary to the Fourteenth Amendment to the Constitution of the United States, in that it deprives the Southern Railway Company of its property without due process of law, and denies to it the equal protection of the law for that,

A—It requires the railway company to part with the lien given it by law upon all goods, wares and merchandise until the freight and demurrage and all other lawful charges are paid.

B—It requires the Southern Railway Company to give or extend credit to the said coal & ice company which it is unwilling to do.

C—It is an adjudication of you honorable board without complaint and answer required by your own rules of practice and without

389 legal or any sufficient evidence before you necessary for the said judgment to be entered, and upon which these exceptions are bases.

Exception No. 4. Tha- the said order or judgment herein excepted to is contrary and is repugnant to the Constitution of the United States as an attempted regulation of interstate commerce, and to a certain act of Congress known as the interstate commerce act, in that the four car-loads of coal, the subject of said order or judgment, were shipped to said coal & ice company at Greensboro, from points in the State of Tennessee and the State of Virginia, and is an interference by your honorable board with interstate shipments.

Wherefore, the Southern Railway Company prays that said order herein excepted to be reviewed and vacated.

Respectfully submitted.

This November 2nd, 1903.

SOUTHERN RAILWAY COMPANY,
By CHARLES PRICE,
F. H. BUSBEE,
ROBERT C. STRONG,
Counsel for Southern Railway Company.

Filed Nov. 3, 1903.
H. C. BROWN, *Clerk.*

390 Southern Railway Company, Law Department.

Nov. 5TH, 1903.

To the honorable the corporation commission of North Carolina:

I am aware that the commission has not yet passed upon the exceptions to the order of the commission made in the case of Greensboro Ice and Coal Company *v.* Southern Railway Com-any and has not fixed the bond to be given in case of an appeal. I am informed that the commission has not yet passed upon the question of appeal, and it would be premature to fix the amount of a bond.

Out of abundant caution we desire to fil*a* a bond, which we place at $2,500 to stay the execution of the order, in the event that the exceptions shall hereafter be overruled.

We respectfully request that the commission shall set down the exceptions for hearing at an early dat-; or if any doubt shall be entertained as to the right of the defendant to file exceptions that the defendant may be given an early opportunity to present its views upon this question.

SOUTHERN RAILWAY COMPANY,
By F. H. BUSBEE, *Attorney.*
R. C. STRONG, *Attorney.*

Filed Nov. 5.

391 NORTH CAROLINA, *Wake County.*

Before the North Carolina Corporation Commission, Raleigh, N. C.

THE GREENSBORO ICE AND COAL COMPANY
v.
SOUTHERN RAILWAY COMPANY.

Bond.

Know all men by these presents, that we, the Southern Railway Company, as principal, and A. B. Andrews, as surety, are held and firmly bound unto the Greensboro Ice and Coal Company, in the sum of twenty-five hundred dollars, good and lawful money of the United States, well and truly to be paid.

Witness our hands and seals this 4th day of November, A. D. 1903.

But this undertaking is made upon the special condition, that.

Whereas, the Southern Railway Company desires to appeal from a certain order of judgment of the North Carolina corporation commission of date Oct. 31st, A. D. 1903, relative to the placing of the four cars of coal involved in the above entitled case, upon the private track of the Greensboro Ice & Coal Company, in Greensboro, N. C. and,

Whereas, the Southern Railway Company desires to stay the operation of said order, and all proceedings and executions thereunder, pending the appeal.

Now therefore, if the Southern Railway Company shall pay into the treasury of the State of North Carolina or as the courts may direct, whatever sum or sums of money that may be required by law for the indemnification of the above named plaintiff, the Greensboro Ice and Coal Company, and at such times as it may be lawfully required, not exceeding the sum hereinafter mentioned, if the appeal of the said Southern Railway Company is dismissed, or the order of the commission is affirmed, or to the extent it may be affirmed in part,
392 then this undertaking shall be void, and of no effort otherwise it is to remain in full force and effect.

SOUTHERN RAILWAY COMPANY,
By F. H. BUSBEE, *Attorney.* [SEAL.]
A. B. ANDREWS. [SEAL.]

NORTH CAROLINA, *Wake County.*

Personally appeared before me A. B. Andrews, the surety in the foregoing undertaking, and being duly sworn say- he is worth the sum of $10,000. over and above all of his debts, liabilities and exemptions allowed by law.

A. B. ANDREWS.

Sworn to and subscribed before me this November 4th, 1903.

W. T. SMITH,
Notary Public.

[NOTARY PUBLIC SEAL.]

North Carolina Corporation Commission.

RALEIGH, *November* 10, 1903.

Robert C. Strong, of counsel for Southern railway, and P. R. Albright, manager of North Carolina car service association, appear before the commission in the matter of Greensboro Ice and Coal Company, asking for a hearing on exceptions, which is granted, and having fixed for Thursday, the 12th day of November at Greensboro, North Carolina.

393 Department of the North Carolina Corporation Commission

Franklin McNeill, Chairman. Sam L. Rogers Commissioner. E. C. Beddingfield. Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Nov.* 10, 1903.

A. Wayland Cook, Esq., Greensboro, N. C.

DEAR SIR: I am directed by the commission to advise you that the matter of the Greensboro Ice and Coal Company against the Southern railway and the North Carolina car service association will be heard at Greensboro, Thursday, at 2 o'clock, p. m., at the court house; and I am directed to request that you have such witnesses as you desire to be present.

Very respectfully,
(Signed) H. C. BROWN, *Clerk.*

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam L. Rogers, Commissioner. E. C. Beddingfield. Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Nov.* 10*th*, 1903.

Mr. M. W. Thompson, Manager Greensboro Ice and Coal Company, Greensboro, N. C.

DEAR SIR: I am directed by the commission to advise you
394 that the matter of the Greensboro Ice and Coal Company against the Southern Railway Company and the North Carolino car service association will be heard at Greensboro, Thursday, 2 o'clock p. m., at the court house; and I am directed to request that you have such witnesses as you desire to be present.

Very respectfully,
(Signed) H. C. BROWN, *Clerk.*

GREENSBORO, N. C. *Nov.* 12, 1903.

GREENSBORO ICE AND COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

The commissioners meet this day in Greensboro pursuant to notice
o complainants and defendants.
Complainants are represented by A. Wayland Cook and E. J.
ustice, attorneys.
Defendant Southern Railway Company is represented by C. B.
Northrop, R. C. Strong, and R. R. King, attorneys.
Exceptions of defendant to the order of the commission are read.
Witnesses are examined for both the complainant and defendant.
The testimony of witnesses is taken down by the court stenographer,
ll of which appears of record in the case. See case No. 1127.
Argument of counsel is heard.
The commission announces that it will take the matter under
dvisement.

95 North Carolina Corporation Commission.

RALEIGH, N. C., *Dec.* 10, 1903.

State of North Carolina, On the Relation of the North Carolina Corporation Commission.

GREENSBORO ICE & COAL COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

This cause coming to be heard on exceptions by the Southern Railway Company, and evidence offered thereon by both parties, the following facts are found;

The Greensboro Ice & Coal Company, jointly with the Southern Railway Company, constructed a side track from the Southern railway into the coal and wood yard of the Greensboro Ice & Coal Company at Greensboro, and on the end and part of this side track within the yard of the Greensboro Ice & Coal Company is a trestle with bins underneath to facilitate the delivery of car-loads of coal. This side track is about 300 feet long.

Between the 17th and 20th of October four cars of coal were transported to Greensboro, consigned to the Greensboro Ice & Coal Company. The Greensboro Ice & Coal Company had a standing order with the Southern railway to place all of their cars of freight on this side track, and offered to pay the freight on these four cars if assurance was given that the cars would be so placed.

The Southern railway refused to place said cars on this side track, as requested by the Greensboro Ice & Coal Company, but offered to

place them on public team track and did place them on public tea track.

The four cars of coal were brought from points beyond t State.

396 The Southern Railway Company, on the 12th of Octobe 1903 issued notice to Greensboro Ice & Coal Company as fo lows:

"Please take notice that commencing 12:00 noon, October 1 1903, this company will decline to switch any cars to your privat siding, in the yards of your company at Greensboro, N. C. and wi only make delivery to you on the public team tracks of this com pany in the yards at Greensboro, N. C. This action is made neces sary by reason of your refusal to comply with car service regula tions declining to pay reasonable charges for the use of cars tha have been detained before unloading on your private track abov referred to and that we find it necessary for the protection of ou equipment to tender you further deliveries upon tracks where car may be under our immediate supervision and control."

There was at that time, to-wit: The 12th of October, 1903, and is still pending, a controversy between Greensboro Ice & Coal Company and Southern railway about certain demurrage charges. The South- ern railway claimed that Greensboro Ice & Coal Company owed them $146.00 demurrage on 13 cars of coal and wood. Greensboro Ice & Coal Company denied that they owned this or any other sum to Southern railway on account of demurrage. The facts in regard to this charge are as follows: For some years there had been a side track constructed jointly by the Greensboro Ice & Coal Company and Southern railway into the former's coal and wood yard at Greens- boro. The Greensboro Ice & Coal Company handles over 200 car- loads of coal per annum; and to expedite the delivery and furnish proper facilities for delivery of coal, Southern Railway Company agreed that the rails be removed from the end of the portion of this side track within the coal and wood yards, and the coal bins might be constructed under the track and the track elevated and placed upon a trestle. This work was begun September 8th, 1903, and finished October 1st, 1903. Greensboro Ice & Coal Company fur- nished most of the material other than the rails and did all of the work except laying and placing the rails.

397 While the above repair was in progress, fourteen cars of freight, consisting of wood and coal, consigned to Greensboro Ice & Coal Company, were transported to Greensboro by the Southern railway. Only one of these cars was ever placed at an accessible point for unloading, and this one was unloaded promptly. Greens- boro Ice & Coal Company designated a side track nearest to their coal and wood yard, being part of the side track leading into said yard but outside of their enclosure as the place at which they desired the cars placed for unloading. Southern railway did not place these thirteen cars as requested nor at any other accessible point during that period. The cars could have been placed on the track desig-

nated. Cars for other persons were placed on this track during this period.

The repair on the side track above mentioned was finished October 1st, and nine of the thirteen cars above mentioned were placed on it by the Southern railway and emptied and returned by the Greensboro Ice & Coal Company within twenty-four hours, thereafter. The remaining four cars were not placed on this side track for about five days, but each one of them was unloaded within three or four hours after they were so placed, and returned to the Southern railway

The freight charges on the fourteen cars were paid but the Southern railway claimed $146.00 demurrage on thirteen of the fourteen cars, which charge Greensboro Ice & Coal Company refused to pay, alleging that they were improper and illegal.

We are of the opinion that no demurrage should be demanded, as Southern railway did not place the cars at the place designated by the shipper. We recognize the right of the Southern Railway Company to refuse to deliver freight until all proper charges for freight and demurrage are paid, but it has no right to demand the payment of improper demurrage charges on thirteen cars already delivered as a condition precedent to the delivery of four cars of coal involved in the order in this case, or to refuse to deliver the four cars on
398 the side track jointly built and owned by the Greensboro Ice & Coal Company and themselves, when they were requested so to do.

It is, therefore, ordered that the exceptions be and they are hereby overruled.

First exception is overruled—the reason alleged for this exception having no existence in fact. Greensboro Ice & Coal Company did not owe the demurrage claimed on five cars of coal and eight cars of wood. Greensboro Ice & Coal Company did not promise to pay demurrage claim or any part of it. Southern railway was not induced to place cars of coal and wood on the siding above mentioned by reason of a promise by Greensboro Ice & Coal Company to pay the alleged demurrage charges. The freight on the four cars embraced in the order and all cars up to that time delivered to Greensboro Ice & Coal Company had been paid, and Southern railway was not required to extend any credit or part with their legal lien upon the four car-loads of coal. It appeared that the freight had been paid and that there was no valid charge for demurrage.

Second exception is overruled. Greensboro Ice & Coal Company had the right to have the four cars of coal placed on the side track built by themselves and the Southern railway, and they demanded that they be so placed.

Third exception is overruled.

"A." The lien which Southern railway had for freight had been discharged by payment thereof by Greensboro Ice & Coal Company, and there was no demurrage or other valid charge against said company.

"B." The freight and all legal charges had been paid and there-

fore Southern railway was not required to extend credit to Greensboro Ice & Coal Company by the said order.

"C." The complaint of Greensboro Ice & Coal Company was filed with the commission and notice thereof was given to the Southern railway, and the Southern railway appeared in response to said notice and answered orally and made defence for Southern
399 railway; and after hearing and considering all of the evidence and argument offered, the order was made by this commission.

Fourth exception is overruled. The order of this commission is not contrary or repugnant to Constitution of the United States or act of Congress establishing the Interstate Commerce Commission.

The cars of freight had arrived at destination and the freight and all proper charges had been paid thereon, and this commission had the power and it was their duty to order delivery of said cars to the consignee.

This December 10, 1903.

[Seal North Carolina Corporation Commission.]

FRANKLIN McNEILL, *Chairman.*

400 Before the North Carolina Corporation Commission.

DECEMBER 14TH, 1903.

In the Matter of THE GREENSBORO ICE AND COAL COMPANY
v.
SOUTHERN RAILWAY COMPANY.

To the North Carolina Corporation Commission and the Greensboro Ice & Coal Company:

The defendant Southern Railway Company hereby gives notice that it appeals from the order of the corporation commission entered on October 1, 1903, requiring the Southern Railway Company to place four cars of coal shipped from points outside of North Carolina to Greensboro, North Carolina, upon a certain private track in Greensboro, and from the order overruling the exceptions filed by the Southern Railway Company to the order above mentioned, entered on December 9, 1903, and from every part thereof, and for its grounds of appeal and assignment of error, saith:

(1) That the corporation commission erred in entering the order of October 31, 1903, upon the record then before the court, (for that the order was not warranted by the allegations of fact as they in some way appeared to the commission, and) for that the order was made *ex parte* and without giving the defendant an opportunity to be heard or answer, and that the entry of said order was not in accordance with due process of law.

(2) For that the corporation commission erred in entering its order of December 9, 1903, as follows:

(*a*) In its finding of facts from the testimony before it as not in accordance with the evidence and in finding that the Southern Railway Company was not entitled to charge demurrage for the refusal of the complainant to accept and unload the cars consigned to it.

401 (*b*) For overruling Exception No. 1, for the reasons stated in the exceptions.

(*c*) For overruling Exception 2, for the reasons stated in the exception.

(*d*) For overruling Exception 3, and subdivision A, B and C thereof, and each of them.

(*e*) For overruling Exception 4, for the reasons stated in the exception.

(3) For the hearing and determination of the controversies and that both the orders were not due process of law.

(4) For that the order requiring the delivery of four cars containing interstate freight before bulk had been broken and while each car was an original package, and before any delivery had been made to and accepted by the consignee and while the same was in the custody and possession, and under the control of the interstate carrier, the defendant, was an attempted regulation of an interference with interstate commerce, and an unconstitutional assumption of power by the said corporation commission, and void.

Wherefore defendant, the appellant, appealing from the orders, asks that the case be transferred to the superior court of such county as shall be designated by the commission for trial under the laws of North Carolina.

December 18th, 1903.

SOUTHERN RAILWAY COMPANY,
By W. A. HENDERSON,
F. H. BUSBEE,
C. B. NORTHROP, AND
R. C. STRONG,
Attorneys.

Ordered that the record in this case be transmitted to the superior court of Guilford county.

FRANKLIN McNEILL, *Chairman.*

402

Cars Placed on Siding.

Greensboro Ice & Coal Company.

Car number.		Arrived.	Place.	Released.	Demurra
N. & W. 46826		9/14	10/1/8 p. m.	10/2/1 a. m.	12
N & W. 10514		9/19	"	" 4 a. m.	7
" 12172		9/19	"	" 7 a. m.	10
" 11440		9/24	"	" 7 a. m.	3
" 6104		9/29	10/2/8 a. m.	" 11.20 a. m.	
" 6047		"	"	" "	
" 7565		"	"	" "	
" 11032		10/2	10/2/12 m.	" 4 p. m.	
" 1818		9/9	"	" 6 p. m.	17
A C L 20724	wood	9/10	10/3/11 p. m.	10/4/10 a. m.	17
		Delay of two days no shifting done.			
S. F W 8707	"	9/10	10/6/30 a. m.	10/6/11 a. m.	17
S O U 42543	"	9/19	"	"	11
A C L 18782	"	9/25	10/7/11.45 a m.	10/7/4 p. m.	7
A C L 21625	"	9714	"	"	17

$118 Bill presented.

N & W 6234	10/7	10/8/8 a. m.	10/8/10 a. m.	
A C L 9812	9/25	"	" 2 p. m.	
A C L 16295	10/6	"	" "	
N & W 6234	10/7	10/10/9.40 a. m.	10/10/6 p. m.	
N & W 22224	10/2	"	" "	
C & O 19931		10/11/10 a. m.	10/11/2 p. m.	
A C L 14478	9/23	"	" 4 p. m.	
S O U 66804	10/13	10/14/7 a. m.	10/14/10 a. m.	
S O U 62146	10/13	10/14/11 a. m.	10/15/8 a. m.	
N & W 23773	10/14	10/26/9 a. m.	10/26/4 p. m.	

Cars Held on the Yard Delivery Refused.

N & W 12565	arrived 10/19	freight paid 10/27
S O U 70734	10/19	"
C & O 17895	10/19	"
S O U 9281	10/20	"
N & W 23283	10/21	"
C & O 18747	10/23	"
S O U 43194	10/25	"
N & W 5885	10/26	10/29
S O U 12983	10/26	11/3
N & W 11502	10/28	"
N & W 10725	10/28	"
N & W 6783	10/30	"

403

A C L 20085	11 / 2	11 / 3
S O U 43106	11 / 2	10 / 10
A C L 22517	11 / 9	10 / 10
A C L 20033	11 / 2	10 / 10

Ex. # 1.

404 Southern Railway Company.

Office of Superintendent.

GREENSBORO, N. C., *Aug. 20th*, —03ch.

File C. —266.

Greensboro Ice & Coal Company, Greensboro, N. C.

DEAR SIR: Referring to conversation this morning. There is no objection from a railroad standpoint to your changing the line and erecting a trestle as indicated on the attached sketch, providing, of course, that the change of line and trestle meets with the requirements of the Southern railroad, and that all of the work is done by your own men and at your own expense.

When the work is completed, it will be passed upon by Mr. Wells.

Yours truly,

ED. COOPMAN,
Superintendent.

Ex. #2.

405 Southern Railway Company.

Office of ——.

GREENSBORO, N. C., *Oct.* 12, 1903.

Greensboro Ice & Coal Company, Mr. M. W. Thompson, Manager.

DEAR SIR:—Please take notice that commencing 12:00 noon, Oct. 17th, 1903 this company will decline to switch any cars to your private siding, in the yard of your company at Greensboro, N. C. and will only make delivery to you on the public team tracks of this company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations declining to pay reasonable charges for the use of cars that have been detained before unloading on your private track above referred to and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control.

Agent, W. E. COFFIN,
Southern Railway Company.

Ex. #3.

406

GREENSBORO, N. C., *Oct.* 31, 190

Greensboro Ice & Coal Co., Greensboro, N. C.

GENTLEMEN:—Referring to your letter of Oct. 27th asking th place certain cars on your private sidings. We are not prepare comply with your request so far as placing in your private yard is cerned, but we can offer you these cars upon our team tracks, and will place them promptly upon your order to that effect, independ of the old account for car service, upon payment of the car serv which has accumulated on each of these cars since tendered to upon team tracks, and which you decline to accept.

I attach statement of car service up to the night of Oct. 31st, t is now due upon cars in our yard for you.

Yours truly,

Ex. #4. W. E. COFFIN, *Agent.*
S.

407

Southern Railway Company.

Office of ——.

GREENSBORO, N. C., *Nov.* 11, 1903.

Greensboro Ice & Coal Company, Greensboro, N. C.

GENTLEMEN: Your letter tenth will refer you to my letter Octob 12th, in which you were advised that by reason of refusal to compl with car service regulations, switching your private track would b discontinued. Cars mentioned in your letter have been tendered you on team tracks and we have been ready at all times to delive same to you on team tracks, or upon payment of charges due on th former cars, and these you now mention, and guarantee in a manne satisfactory to us the payment of future charges on private track to place cars on such private track. We deny that you have an claim against this company for detention, that these cars in ou possession are delayed *so-ally* by reason of your arbitrary action, and that instead we have a lien upon these cars, car service at rate one dollar per day, properly chargeable to you for neglect in unloading.

Yours truly,

Ex. #5. W. E. COFFIN, *Agent.*
S.

408

Southern Railway Company.

Office of ——.

GREENSBORO, N. C., *Nov. 7th*, 1903.

Mr. M. W. Thompson, Secretary Greensboro Ice & Coal Company, Greensboro, N. C.

DEAR SIR: Referring to your inquiry as to whether or not I think the chute that you have erected is a benefit to the Greensboro yard

I will state that it most decidedly is, as it has enabled you to release cars in half the time as heretofore, and is therefore of mutual benefit.

Respectfully, R. A. WHITAKER, *Yard Master.*

Ex. 6.

409 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 19th, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Article.	Initials.	Number.	X Numbers.
Coal.	N & W	10514	

Freight and charges $8.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. Sept. 21st 1903.

This company will be liable only as warehouseman while the L. C. L. freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Exhibit #7.

410

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 14, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is rea for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Article.	Initials.	Number.	X Number.
Coal.	So.	46826	

Freight and charges $8.....storage charges will accrue on le than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to charge of.....dollars per day, or fraction of a day for detentio and use of tracks, if not unloaded within 72 hours from 7 a. m Sept. 15th, 1903.

This company will be liable only as warehousemen while the L C. L. Freight is in their possession, holding same only at owner's ris of loss by fire.

Strangers must present evidence of ownership, or be identified before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Exhibit #7.

411 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 24, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Coal.	N & W	11440	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. September 25th, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or ....

.....Consignee.

Exhibit #7.

412 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 29th, 1903.
Consignee.	**Address.**
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Three Cars Coal.	N & W	6047	
	"	6104	
	"	7565	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. Sept. 30th, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Oct. 2, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Coal.	N & W	11032	

Freight and charges $.....storage charges will accrue on less
an — freight after.....hours from.....o'clock.....
the date of this notice. Car-load shipments will be subject to a
arge of.....dollars per day, or fraction of a day for detention
d use of tracks, if not unloaded within 72 hours from 7 a. m.
t. 3, 1903.
This company will be liable only as warehouseman while the L.
L. Freight is in their possession, holding same only at owner's risk
loss by fire.
Strangers must present evidence of ownership, or be identified,
fore delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

.....

.....Consignee.

414

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 10, 1903.
Consignee.	**Address.**
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Wood.	S. F. & W.	8707	
"	A. C. L.	20724	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 48 hours from 7 a. m. Sept. 11, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Ex. #7.

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 25, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready or delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Wood.	A. C. L.	9812	
"	" " "	18782	

Freight and charges $.....storage charges will accrue on less han car-load freight after.....hours from.....o'clock..... f the date of this notice. Car-load shipments will be subject to a harge of.....dollars per day, or fraction of a day for detention nd use of tracks, if not unloaded within 48 hours from 7 a. m. Sept. 26, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Ex. #7.

416 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Oct. 19, 1903
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Article.	Initials.	Number.	X Number.
Coal.	So.	70734	
"	N & W	12565	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. Oct. 20th, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Ex. #7.

417

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 14th, 1903.
Consignee.	**Address.**
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Wood.	A. C. L.	21625	

Freight and charges $————storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars, or fraction of a day for detention and use of tracks, if not unloaded within 48 hours from 7 a. m. Sept. 15, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Exhibit #7.

418

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 19th, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you ~~from~~

~~Shipper.~~	Station.	Date.	Pro. No.
Article.	Initials.	Number.	X Number.
Wood.	So.	42543	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 48 hours from 7 a. m. September 21, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

Ex. #7.

419 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 19, 1903.
Consignee.	**Address.**
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Article.	Initials.	Number.	X Number.
Coal.	N & W	1818-12172	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. Sept. 10, 1903.

This company will be liable only as warehouseman while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

420 Office of North Carolina Corporation Commission.

RALEIGH, *July* 9, 1903.

Circular No. 36.

(As amended.)

Storage and Demurrage Rules—Time Limit for Placing of Cars and Delivery of Freight—Local Transfer and Switching Charges.

Storage and demurrage may be assessed by railroad companies on all freight received for delivery in car-load lots or in less than car-load lots if not removed in conformity with the following rules and regulations:

RULE I.

No storage or demurrage charges, however, shall in any case be allowed — notice of the arrival of goods has been given to the owner or consignee thereof by the railroad company, and it shall be the duty of such railroad company to give prompt notice to consignee of the arrival of goods, together with the contents, weight and amount of freight charges due thereon as shown by way-bill, and when goods or freight of any kind, in car-load consignments said notice must contain letters or initials and number of the car. Notice shall be given by delivering same in writing in person or by leaving same at soncignee's place of business or by depositiog it in the postoffice.

RULE II.

For storage of package freights and all freight less than car-load, unloaded in depot or ware-house, which is not removed by the owner thereof from the custody of the railroad company within forty-eight hours (not including Sundays and legal holidays), a charge of storage for each day or fraction of a day that such consignment may remain in the custody of the carrier of one cent per hundred pounds per day, with minimum charge of five cents for any one package or lot for any one consignee, may be made; but not more than one dollar per day for any one consignment not in excess of a car-load.

RULE III.

All car-load freight taking trad*k* delivery and such as is to
421 be unloaded by consignee, which is not unloaded from cars containing same within forty-eight hours, (not including Sundays and legal holidays) after the car or cars are placed accessible for unloading may be subject to a charge of one dollar per car

for each day or fraction of a day that said car or cars remain loaded: Provided, however, that seventy-two hours shall be allowed for the unloading of fertilizers, brick and the following commodities, when in bulk only: Cotton seed, cotton seed hulls, coal coke, fertilizing material, grain, lime, tan-bark and dressed lumber in box cars.

Provided further, whenever by reason of delays in transit cars are bunched and more cars than one are received at same time, no demurrage shall be made for excess over one car: Provided, at least one car shall be unloaded daily.

RULE IV.

When consignors ship goods consigned to themselves or order, it shall be the duty of the railroad company to give legal notice to such consignees or persons to whom shipping directions order delivery. This notice may be addressed by mail to the consignee at point of delivery and demurrage will begin as in other cases of notice by mail; and the mailing of such notice shall be sufficient notice in such cases, whether the consignee actually received the same or not.

RULE V.

The time allowed for removing freight before storage or demurrage charges apply will be computed from 7 o'clock a. m. of the day following date of notice (Sundays and legal holidays excepted).

RULE VI.

A consignee living more than five (5) miles from the depot and whose freight is destined to his residence or place of business so located, shall not be subject to storage or demurrage charges allowed in the above rules until a sufficient time has elapsed after notice for said consignee to remove said goods by the exercise of due diligence: Provided, that in the delivery of car-load freight railroads will not be required in any case to hold freight free of demurrage for a
422 longer period than five (5) days after notice, except as otherwise provided in Rule II.

RULE VII.

Where, upon the request of an intending shipper, the railroad company places a car at a reasonably accessible point on its team tracks or on a private track designated by the shipper, free loading time shall expire forty-eight hours (not including Sundays or legal holidays) from the time such car or cars are so placed; and thereafter a demurrage charge of not more than one dollar per car per day or fraction of a day may be assessed and collected on all such cars as have not been tendered to the railroad company with shipping instructions.

RULE VIII.

When any railroad company fails to deliver freights at the depot or to place loaded cars at an accessible place for unloading within forty-eight hours, (not including Sundays and legal holidays), computed from 7 o'clock a. m. the day after the arrival of same, the shipper or consignee shall be paid one dollar per day for each day or fraction of a day said delivery is so delayed: Provoded, the railroad company may require the payment of freight before delivery.

RULE IX.

Where a shipper makes application in writing for a car or cars to be loaded with any kind of freight, and the railroad company fails to furnish same within four days from 7 o'clock a. m. next day after such application, such railroad company so offending shall forfeit and pay to the shipper applying the sum of one dollar per car per day for each day or fraction of a day's delay after the expiration of free time. Provided the shipper makes demand therefor in writing within thirty days thereafter. The railroad companies may require applicant to deposit two dollars for each car so demanded. This money may be retained as a forfeit to the railroad company in case the car is not loaded, to pay trackage; if the car is loaded, then the said two dollars shall be refunded to the shipper with the bill of lading.

423

RULE X.

Whenever shipments have been received by any railroad company, such shipments destined to stations within a distance of fifty miles from starting point shall be delivered within three (3) days from 7 o'clock a. m. next day after receipt of shipment, and in one day's additional time for each additional twenty-five (25) miles or fraction thereof; or for failure to transport such shipments within the time pre-scribed the railroad company shall forfeit and pay to the consignor or consignee the sum of one dollar per day on all car-load freight and one cent per hundred pounds per day on package freights and freight in less than car-load, with minimum charge of five cents for any one package: Provided the shipper makes demand therefor in writing within thirty days thereafter: Provided further, that the amount of the penalty demanded on any shipment, less than car-load, shall not exceed one dollar per day, and in no case exceed the value of the goods transported. The period of time during which the movement of trains is suspended on account of accident or any cause not within the power of the roads to prevent shall be added to the free time allowed herein and accounted as additional "free time."

RULE XI.

Whenever the weather during the period of free time is so severe, inclement or rainy that it is impracticable to secure means of removal

or loading of freight, or where from the nature of the goods removal or loading would cause injury or damage, such time shall be added to the free period, and no demurage charges shall be allowed for such additional time. This rule applies to the state of the weather during business hours.

RULE XII.

The commission reserves the right to hear and grant application to suspend the operation of these rules upon complaint of abuse, or whenever justice shall demand this course.

RULE XIII.

Local Transfer and Switching Charges.

Railroad companies shall furnish shippers cars for loading
424 and shall also accept from each other cars loaded at ware-houses or side tracks of one road for delivery at side-tracks or ware-houses on the other road within the space of two miles beyond the starting point. The railroad company furnishing the car and performing the initial movement may charge two and one-half dollars per car.

RULE XIV.

When car is destined to a warehouse on a connecting line which requires switching, the company so receiving and delivering may charge $1.50 additional.

After car is placed for loading, the shipper shall load same within twenty-four hours therefrom, and consignee shall, when car is placed for unloading, unload same within twenty-four hours; otherwise the usual demurrage charges may be made.

By order of the commission.

FRANKLIN McNEILL, *Chairman.*

H. C. BROWN, *Clerk.*

Effective July 15, 1903.

Postal card addressed to Greensboro Ice & Coal Company, Greensboro, N. C. and made part of Exhibit #1.

Southern Railway Company.

GREENSBORO, N. C. *Oct.* 20, 190

G'boro I. & C. Co.

Articles wood.

Initials So. Number 928

Freight and charges $.....storage charges will accrue on
than car-load freight after.....hours from....o'clock.....
of the date of this notice. Car-load shipments will be subject
charge of.....dollars per day or fraction of a day for deten
and use of tracks, if not unloaded within 48 hours from 7 a.
Oct. 20, 1903.

This company will be liable only as warehousemen while the
C. L. freight is in their possession, holding same only at owner's
of loss by fire.

Strangers must present evidence of ownership, or be identi
before delivery will be made.

W. E. COFFIN, *Agen*

Sign this notice, authorizing delivery to bearer,

or .....

..... Consig

Ex. 8.

425 Southern Railway Company.

Telegram.

GREENSBORO, N. C
Time filed 4:30

P. R. Albright, Mgr.,

Your wire date the Greensboro Ice & Coal Company have agreed
pay the car service which you may assess on the cars at Greensb
after you have investigated the matter and made charge.

W. E. C

Ex. 9.

426 NORTH CAROLINA, *Guilford County.*

Superior Court.

STATE OF NORTH CAROLINA ON THE RELATION OF THE NORTH CAROLINA CORPORATION COMMISSION AND GREENSBORO ICE & COAL COMPANY.

vs.

SOUTHERN RAILWAY COMPANY.

Bond.

Whereas Southern Railway Company, the defendant, has appealed from the order of the corporation commissioners, overruling its exceptions to the order filed in the above entitled case, while pending before the North Carolina corporation commission,

Now therefore, we the Southern Railway Company, as principal and A. B. Andrews as surety, undertake in the sum of two hundred and fifty (250) dollars that the defendant shall pay to the relators of the plaintiffs or either of them, all such costs and damages as shall be adjudged against it upon appeal.

SOUTHERN RAILWAY COMPANY.

(Signed) By F. H. BUSBEE, *Attorney.*

(Signed) A. B. ANDREWS.

WAKE COUNTY, *ss:*

A. B. Andrews, being duly sworn, doth say that he is worth the sum of five hundred dollars above his debts and liabilities and exemptions allowed by law.

(Signed) A. B. ANDREWS.

Sworn and subscribed before me this 11th day of January, 1904.

(Signed) P. H. BUSBEE,

[SEAL.] *Notary Public.*

427 I, H. C. Brown, clerk of the North Carolina corporation commission, do hereby certify that the foregoing is a full, true and perfect transcript of the record in the case of State of North Carolina on the relation of the North Carolina corporation commission, upon complaint of Greensboro Ice & Coal Company *vs.* The Southern Railway Company.

Witness my hand and official seal, this the 23rd day of March, 1904.

H. C. BROWN,

Clerk North Carolina Corporation Commission.

428 EXHIBIT No. 13, Filed August 27th, 1904.

STATE OF NORTH CAROLINA, *County of Guilford.*

Be it remembered, that on the 22nd day of January, A. D. 1904, there was filed in the office of the clerk of the superior court of Guilford county, from the North Carolina corporation commission, the following transcript of a record entitled:

Transcript of Record.

Before the North Carolina Corporation Commission.

STATE OF NORTH CAROLINA on the Relation of the NORTH CAROLINA CORPORATION COMMISSION upon Complaint of GREENSBORO ICE AND COAL COMPANY,

against

SOUTHERN RAILWAY COMPANY.

Be it remembered, that on the 20th day of October, 1903, the Greensboro Ice and Coal Company filed complaint as follows:

Letter.

W. E. Worth, Pres. M. W. Thompson, Tr. and Mgr.

The Greensboro Ice and Coal Company,

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily

Works located opposite new Southern depot.

GREENSBORO, N. C., *October 20th,* 1903.

The Hon. Franklin McNeill, Chm'n corporation commission, Raleigh, N. C.

SIR: I enclose you a copy of a notice recently served upon me by the agent of the Southern railway at this point, and desire to present the facts to you trusting that you can afford us the necessary
429 relief. We have been endeavoring for the past two years to secure the erection of a trestle to facilitate handling the quantity of coal we use, but we were unable to do this until just recently when permission was granted to elevate the track we had been using for unloading our cars. The rails were removed under railroad instructions, we built the trestle at our own expense, and did the necessary grading ourselves, the R. R. company replacing the rails.

roceeded with the erection of the trestle immediately upon re-
of permission as the cool weather was coming on and we wished
t in our stock of coal, and coal that was on the road coming in
anding order it was impossible for us to handle, as the track had
torn up, and it was held on R. R. siding and not placed on our
as stated in letter.

on completion of the trestle, I was surprised to have presented
of $124.00 for demurrage on cars that had never been placed,
I was given to understand that I should have to pay the same or
s would be taken to enforce a settlement, notwithstanding
act that we agreed to unload some of these cars if they would
them on a siding near the plant that was being used by other
es and was a public team track, which they did not do.

to the injustice of their demand, they so far admit this as to
they will remit half of the demurrage, but that I must pay the
ice, and served me with the inclosed notice.

ould there be no relief from this force method, it means that
all have to go out of business or pay their claim, as we handle
200 cars a year, and when running the plant, it takes over a
oad of wood a day, so that you can see this is impracticable, and
d mean our maintaining a regular hauling force at a cost of over
usand dollars a year. Viewing the proposition in another light,
had we run up this bill through neglect instead of inability for
h the R. R. was responsible as the tracks were torn up by their
uctions, they should still have shown a sufficient amount of
ality to have withheld any such claim as one of the officials here
stated that he considered the trestle worth more to the R. R.
than to this company, as we can handle twice the number of
cars at a time, and the car service association will gain in a
t time the amount lost on their cars, by the rapidity with which
can be returned to them.

hose familiar with the facts, view this as an outrage, inasmuch
e have been giving them about $15,000 a year in freights, giving
no previous trouble, entering no suits for delay of cars, so there
thing back of the claim, and I trust that you may see this in the
e light. I would state that similar action has been taken with
r parties for an amount of $2.00 claimed from last spring.

ince the enclosed order has gone into effect there have been four
come on the yard, which have been marked up for team track
rding to order, and they have refused to turn the same over to
nd make delivery on our trestle as instructed.

We have refused to accept the cars unless placed as per our in-
ctions, and also to pay freight for same unless assurance is given
these cars will be placed as instructed. We desire immediate
very of these cars, and are in need of same, and I trust that you
use all means in your power to effect this, and write me in-
cting us as to our positions in the matter.

I am, very truly yours, M. W. THOMPSON.

Notice.

Southern Railway.
Office of

GREENSBORO, N. C., *Oct.* 12, 1903.

Greensboro Ice and Coal Company, Mr. M. W. Thompson, Mgr.

DEAR SIR: Please take notice that commencing 12:00 noon Oct. 17th, 1903, this company will decline to switch any cars to your private siding, in the yards of your company, at Greensboro, N. C., and will only make delivery to you on the public team tracks of this company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations declining to pay reasonable charges for the use of cars that have been detained before unloading on your private track above referred to and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control.

431

(Signed) W. E. COFFIN,
Agent Southern Railway Company.

Answer of Commission.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Oct.* 24, 1903.

Mr. M. W. Thompson, treasurer Greensboro Ice Company, Greensboro, N. C.

DEAR SIR: Your letter in regard to switching of cars to your private siding by the Southern railway received and the commission will advise you Monday as to such action as may be taken.

Very respectfully, H. C. BROWN, *Clerk.*

Letter.

W. E. Worth, Pres. M. W. Thompson, Tr. and Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Dailey.

Works located opposite new Southern depot.

432 GREENSBORO, N. C., *October* 24, 1903.

Hon. Franklin McNeill, chairman corporation commission, Raleigh, N. C.

DEAR SIR: I wrote you on the 20th in reference to the embargo that had been placed on this company by the Southern Ry. Co. by reason of our failure to pay claim for cars that were not placed while this company was building a trestle. I have just seen a copy of the demurrage rules issued by the commission in effect July 1st, and in accordance with same my refusal to pay claim is justified.

First. Notice was not served upon us in strict compliance with Rule 1, we simply being furnished with car numbers.

Secondly. Rule 3 states that demurrage charges shall commence 48 hours after cars are placed at an accessible point. These cars are held on railroad yard, and we never placed at an accessible point until they were delivered on our trestle, and no request made of us to designate a place otherwise where we would receive them, and all cars were unloaded in three or four hours after being placed on trestle, and kept an extra force to do this to assist the railroad and give them the empties as soon as possible.

Third. Besides being a party to the claim, they are serving as judge of the same also, and passed upon us a rule that will cripple our business or make us pay the claim, and the means employed is, I believe, in defiance of the intentions of Rule 8.

Rule 7 states that for loading a car shall be placed at an accessible point on team track or private track designated by the shipper. I should like to have you write me whether it is not the intention in Rule 8 is not the same for unloading cars? Where parties have private tracks the placing of cars upon the same is as essential for unloading as for loading, though Rule 8 uses the term "accessible place," and not the qualification of Rule 7.

Won't you kindly write me at once if the matter is receiving attention. We have cars on the yard that we are needing badly, and they refuse to place them on our yard as we designate, and I pray
433 that you act at once in this matter and have instructions issued or means used to have this unjust ruling removed.

I will thank you, as requested above, to give me your ruling as to

term "accessible place" in Rule 8, and also furnish me with a copy of the regulations or rules as issued as the copy I have is a borrowed one.

Very truly yours, M. W. THOMPSON.

North Carolina Corporation Commission.

RALEIGH, *Oct. 26th*, 1903.

Col. A. B. Andrews, first vice president, Southern railway, being present the matter of the complaint of the Greensboro Ice and Coal Company is discussed.

Letter.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Oct. 26th*, 1903.

Mr. M. W. Thompson, manager, Greensboro, N. C.

DEAR SIR: The commissioners have had the matter of your complaint against the Southern railway in regard to demurrage charges and the failure to place cars on your private siding for unloading before them today.

I am directed to say that they endeavored to get Mr. Albright, manager of the North Carolina car service association, before them this morning for a conference in regard to the accumulative demurrage charges, but he is not in the city and I understand that he is now in Greensboro to see you touching the matter.

434 As to whether or not you are liable for the demurrage charges claimed against you, the commission can not pass upon this until it has all of the facts before it; but as to the placing of cars on your siding, the commission is of the opinion, with the facts presented, that if you have paid the freight, the company should place the cars on the siding as desired, and the Southern railway has been so notified.

As soon as Mr. Albright returns the matter of the accumulative demurrage charges claimed will be taken up with him.

Very respectfully, H. C. BROWN, *Clerk.*

Notice to Railroad Company.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *Oct. 26th*, 1903.

Col. A. B. Andrews, first vice president Southern Railway Company, Raleigh, N. C.

DEAR SIR: I am directed by the commissioners to enclose you copy of letter written to the Greensboro Ice and Coal Company, and to say to you that they are of the opinion that you should not refuse to switch the cars of this company after the freight has been paid to the private siding as desired, and they trust that you will give instructions to have the cars placed without delay.

Very respectfully, H. C. BROWN, *Clerk.*

Enc.

435 *Letter to Commission.*

W. E. Worth, Pres. M. W. Thompson, Tr. and Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealer- in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *Oct.* 27, 1903.

Mr. H. C. Brown, clerk corporation commission, Raleigh, N. C.

DEAR SIR: I am in receipt of yours of yesterday, stating that the Southern railway at this point has been notified that cars should be delivered on our siding as requested. We have paid freight on cars of which there are seven now but up till five o'clock this p. m. no instructions had been issued as to their being placd. I trust, however, this will be done shortly. The shippers at this point are very much interested in this decision, as the same means have been threatened in other instances, and their representative, Mr. Schenck, told me last night that they considered it their privilege to adopt this means to collect claims whenever they saw fit. Refusing delivery on private tracks is exercising a lien, and while there has been no decisions, I think, in this State, the courts of Ohio, and the supreme

court of Illinois have decided that a lien can only be exercised in case of refusal to pay freights; that a carrier can only collect any demurrage charge by process of law.

In the present instance I shall be glad for the commission to settle this question, as I feel that under the facts and ruling formulated by the commission they will render me a favorable decision, and I shall be glad to render any further information the commission may desire. I am,

Very truly yours, M. W. THOMPSON.

436 *Letter to Commission.*

W. E. Worth, Pres. M. W. Thompson, Tr. and Mgr.

The Greensboro Ice and Coal Company.

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *Oct.* 28, 1903.

Hon. Franklin McNeill, chairman corporation commission, Raleigh, N. C.

DEAR SIR: In regard to our case before your honorable body, I understand that Mr. Albright will defend the railroad's action in refusing to deliver subsequent cars from those upon which the original bill of demurrage was claimed, was by reason of the fact that we agreed to pay this original bill in order to have the cars placed and then refused afterward. I desire to state that we have maintained throughout exactly the same attitude in this matter, that we never intimated that we would pay over the money for this claim, and I desire to make this statement to the commission, and we could not expect much sympathy from you if our case had come before you in this light. Mr. Albright has stated our case as above to another party, and I have written him that he was misinformed by the agents at this point, and the agent has just admitted to me that he believed we had maintained the same position throughout this matter. At this 6 p. m. no instructions have been given as to the placing of our cars. It seems as though the matter being in your hands the R. R. would not continue to force a settlement otherwise, and after your notifying them they should be placed. We need these cars badly and have been unable to fill our orders, by reason of not receiving them. Trusting that you — be able to afford us this relief shortly, I am,

Very truly, M. W. THOMPSON.

437 North Carolina Corporation Commission.

RALEIGH, *Oct.* 29*th*, 1903.

P. R. Albright, manager, North Carolina car service association, representing defendant, appears before the commission and is heard in the matter of the complaint of Greensboro Ice and Coal Company *vs.* The Southern Railway.

Telegram.

GREENSBORO, N. C., *Oct.* 31*st*, 1903.

Hon. Franklin McNeill, corporation commission, Raleigh, N. C.:

Railroad continues refusing delivery cars without relief. Must suspend business. Advise action.

GREENSBORO ICE AND COAL COMPANY.

Telegram.

Reply.

RALEIGH, *Oct.* 31*st*, 1903.

Greensboro Ice and Coal Company, Greensboro, N. C.:

Order issued directing placing cars within 48 hours. Tender freight charges.

FRANKLIN McNEILL, *Chairman.*

Order.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.

H. C. Brown, Clerk.

RALEIGH, N. C., *Oct.* 31*st*, 1903.

438 THE GREENSBORO ICE AND COAL COMPANY
against
SOUTHERN RAILWAY COMPANY.

This cause coming on to be heard upon complaint and after notice to the defendant and an appearance by them and it being made to appear to the commission by the plaintiff that four cars of coal, consigned to the complainant, have been conveyed to Greensboro by the Southern Railway Company, and that said cars are now and have

been on the yards of said railway company for several days, and that the agents of said company were requested by said consignees to place said cars for unloading soon after their arrival on a side track built at the expense of and by said complainant and said railway company to facilitate the loading and unloading of complainant's freights. And that said consignees offered to pay the freight charges due on said cars of coal if the railway company would indicate their willingness to place them as requested by consignee; and it further appearing that the said railway company have refused to place the said cars as requested and insist that they will place said cars only on public team tracks; and it further appearing that said cars of coal can be unloaded by consignees in much less time and at much less expense on the track constructed for that purpose than on public team tracks and at no greater expense to the railway company; and it further appearing that the cause assigned by the Southern railway for its refusal to place cars as requested by consignees is insufficient, namely: That consignee refused to pay certain demurrage charges which the railway company claims accrued on other cars while on public team tracks of said railway company, and which charges the consignees dispute and allege to be unjust:

It is, therefore, ordered that the Southern Railway Company, upon the payment of the freight due on said cars of coal, and within forty-eight hours after service of this order, place the four cars of coal consigned to the Greensboro Ice and Coal Company on tracks provided by complainant and defendant for the loading and unloading
439 of the freights of the complainant to the end that the same may be unloaded and the complainant receive *their* freights.

FRANKLIN McNEILL,
Chairman N. C. Corporation Commission.

Served on A. B. Andrews, first vice president, Southern railway, at 11:50 o'clock a. m., Saturday morning, October 31, 1903, by reading to him and leaving with him a copy of within order.

This October 31, 1903.

H. C. BROWN,
Clerk North Carolina Corporation Commission.

Letter to Thompson.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, N. C., *Nov. 2nd,* 1903.

Mr. M. W. Thompson, manager Greensboro Ice and Coal Company, Greensboro, N. C.

DEAR SIR: The commission wired you on Saturday that the Southern railway had been ordered to place the cars on your siding within 48 hours. This time will expire on Tuesday at noon. If the cars are not placed by that time, please advise the commission.

Very respectfully, H. C. BROWN, *Clerk.*

Telegram.

28 RD AN K. 10 Paid.
1:30 p. m. Nov. 3, 1903.

GREENSBORO, N. C., *3rd Nov.,* 1903.

Hon. Franklin McNeill, corporation commission, Raleigh, N. C.:

440 Cars unplaced. No orders issued. Freight paid one week ago.

GREENSBORO ICE AND COAL CO.

Letter of Commissioners.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, N. C., *Nov. 3rd,* 1903.

Greensboro Ice and Coal Company, Greensboro, N. C.

GENTLEMEN:—The commissioners are in receipt of your telegram, and I am directed to say that they will bring suit for the penalties in regard to failure to obey the order of the commission, as the law provides.

Very respectfully, H. C. BROWN, *Clerk.*

Letter.

W. E. Worth, Pres. M. W. Thompson, Tr. and Mgr.

The Greensboro Ice and Coal Company,

Wholesale and Retail Dealers in Ice and Coal.

Capacity of Plant, 50 Tons Daily.

Works located opposite new Southern depot.

GREENSBORO, N. C., *Nov. 3rd*, 1903.

Hon. Franklin McNeill, chamn., corporation commission, Raleigh, N. C.

DEAR SIR:—I received your wire of October 31st, "Order issued directing placing cars within forty-eight hours. Tender freight charges," and your letter of November 2, requesting advice
441 if cars were placed by this day, noon. I have just wired you, "Cars unplaced. No orders issued. Freight paid one week ago." I paid the freight on all cars received up to October 27th immediately upon receipt of your letter of the day before stating that it was your opinion that these cars should be placed as directed. Since that time I have since paid freight bills as presented in the usual manner, and this morning went to the office and settled a few more bills, everything they had to date.

At 11:30 a. m. I was called up by Southern, in reference to another matter, and told that these cars would not be delivered on our private siding until the original claim was paid, and that cars would not be offered on team track unless assurance would be given that they would be unloaded. As we have now some 17 cars hung up, you can readily understand the impracticability of our undertaking to do business under the restrictions they have imposed upon us. We have been unable to fill some wood and coal orders by reason of lack of certain grades, which are held here on the yard. Trusting you will use all your powers to relieve the situation, I am,

Very truly yours, M. W. THOMPSON.

Exceptions.

To the Honorable the North Carolina corporation commission, Raleigh, North Carolina:

The Southern Railway Company, a corporation existing under and by virtue of the laws of the State of Virginia, files with your honorable board, its exceptions to the particulars that it objects to your order, or judgment, of date October 31st, A. D. 1903, relative to the placing of the four cars of coal involved upon the private

track of the Greensboro Ice and Coal Company, in Greensboro, North Carolina, and states the grounds thereof, as follows:

442 Exception No. 1. That the side track of the Greensboro Ice and Coal Company is the private property of that company, with the exception of the rails, and is under the control of that company and built by that company for its own use and convenience, and not for the use or convenience of the Southern Railway Company; that to make the said side track more useful and profitable to said coal and ice company, that company caused the track to be gradually raised so that cars of coal could be dumped into bins made under said track with the least inconvenience to the said coal and ice company; that during the construction of this work, and with no default on the part of the Southern Railway Company, certain demurrage charges accrued, under order No. 36, rules of your honorable board, on five car-loads of coal and on eight car-loads of wood, amounting in all to one hundred and forty-six dollars ($146.00), and under promise to pay said amount, upon which the Southern Railway Company relied and acted, the said coal and ice company induced the Southern Railway Company to place the said car-loads of coal and wood upon the said private track, and said coal and ice company have since refused to pay said demurrage charges, though several times requested and demanded by the Southern Railway Company to do so; that the Southern Railway Company thereupon refused and still refuses to place any more cars of freight upon the private side track of the coal and ice company and to extend them credit or part with their legal lien upon the four car-loads of coal ordered placed by your honorable board, or with their legal *lein* upon any goods, wares or merchandise, until all freight, demurrage, or other charges have been fully paid, which the said railway company submits it has the right to do.

Exception 2. That the Southern Railway Company is ready and willing and has repeatedly offered to place said four cars of coal and other cars of merchandise accessible on its public team or delivery track in the city of Greensboro, N. C., and has placed said cars accessible as aforesaid, but the said coal and ice company refuses to receive them. The Southern Railway Company contends and

443 insists that the said coal and ice company has not any superior right to the delivery of their goods, wares and merchandise, and that it is justified in refusing to place cars of coal and ice company upon its private siding or tracks, and thus part with their property.

Exception 3. That the said order or judgment herein excepted to is contrary to the fourteenth amendment to the Constitution of the United States, in that is deprives the Southern Railway Company of its property without due process of law, and denies to it the equal protection of the law for that,

a. It requires the railway company to part with the *lein* given it by law upon all goods, wares and merchandise until the freight and demurrage and all other lawful charges are paid.

b. It requires the Southern Railway Company to give or e credit to the said coal and ice company which it is unwilling to

c. It is an adjudication of your honorable board without com and answer required by your own rules of practice and without or any sufficient evidence before you necessary for the said judg to be entered and upon which these exceptions are based.

Exception 4. That the said order or judgment herein except is contrary and is repugnant to the Constitution of the United S as an attempted regulation of interstate commerce, and to a ce act of Congress known as the interstate commerce act, in tha four car-loads of coal, the subject of said order or judgment, shipped to said coal and ice company at Greensboro, from poin the State of Tennessee and the State of Virginia, and is an int ence by your honorable board with interstate shipments.

Wherefore, the Southern Railway Company prays that said herein excepted to be reviewed and vacated.

This November 2, 1903.

Respectfully submitted.

SOUTHERN RAILWAY COMPAN
By CHARLES PRICE,
F. B. BUSBEE,
ROBERT C. STRONG,
Counsel for Southern Railway Compan

Filed November 3, 1903.
H. C. BROWN, *Clerk.*

444 Southern Railway Company, Law Department.

NOVEMBER 5TH, 190

To the honorable the corporation commission of North Carolina:

I am aware that the commission has not yet passed upon the ex tions to the order of the commission made in the case of Greens Ice and Coal Company *vs.* Southern Railway Company, and not fixed the bond to be given in case of an appeal. I am infor that the commission has not yet passed upon the question of ap and it would be premature to fix the amount of a bond.

Out of abundant caution we desire to file a bond, which we p at $2,500 to stay the execution of the order, in the event that the ceptions shall hereafter be overruled.

We respectfully request that the commission shall set down the ceptions for hearing at an early day; or if any doubt shall be en tained as to the right of the defendant to file exceptions that the fendant may be given an early opportunity to present its views u this question.

SOUTHERN RAILWAY COMPANY
By F. H. BUSBEE, *Attorney.*
R. C. STRONG, *Attorney.*

Filed November 5th.

Bond.

NORTH CAROLINA, *Wake County.*

Before the North Carolina Corporation Commission, Raleigh, N. C.

THE GREENSBORO ICE AND COAL COMPANY
against
SOUTHERN RAILWAY COMPANY.

Know all men by these presents, that we, th eSouthern Railway Company, as principal, and A. B. Andrews, as surety, are held
445 and firmly bound unto the Greensboro Ice and Coal Company, in the sum of twenty-five hundred dollars, good and lawful money of the United States, well and truly to be paid.

Witness our hands and seals, this 4th day of November, A. D. 1903.

But this undertaking is made upon the special condition, that.

Whereas, the Southern Railway Company desires to appeal from a certain order or judgment of the North Carolina corporation commission of date October 31, A. D. 1903, relative to the placing of the four cars of coal involved in the above entitled case, upon the private track of the Greensboro Ice and Coal Company, in Greensboro, N. C.; and

Whereas, the Southern Railway Company desires to stay the operation of said order, and all proceedings and executions thereunder, pending the appeal.

Now, therefore, if the Southern Railway Company shall pay into the treasury of the State of North Carolina, or as the courts may direct, whatever sum or sums of money that may be required by law for the indemnification of the above named plaintiff, the Greensboro Ice and Coal Company, and at such times as it may be lawfully required, not exceeding the sum hereinafter mentioned, if the appeal of the said Southern Railway Company is dismissed, or the order of the corporation commission is affirmed, or to the extent it may be affirmed in part, then this undertaking shall be void and of no effect; otherwise it is to remain in full force and effect.

SOUTHERN RAILWAY CO.,
By F. H. BUSBEE, *Atty.* [SEAL.]
A. B. ANDREWS. [SEAL.]

NORTH CAROLINA, *Wake County.*

Personally appeared before me A. B. Andrews, the surety in the foregoing undertaking, and, being duly sworn, says he is worth the sum of $10,000 over and above all of his debts, liabilities and
446 exemptions allowed by law.

A. B. ANDREWS.

Sworn to and subscribed before me, this November 4, 1903.

W. T. SMITH,
Notary Public.

[NOTARY PUBLIC SEAL.]

North Carolina Corporation Commission.

RALEIGH, *November* 10, 1903.

Robert C. Strong, of counsel for Southern railway, and P. R. Albright, manager of North Carolina car service association, appear before the commission in the matter of Greensboro Ice and Coal Company, asking for hearing on exceptions, which is granted, and having fixed for Thursday, the 12th day of November, at Greensboro, North Carolina.

Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, N. C., *November* 10, 1903.

A. Wayland Cook, Esq., Greensboro, N. C.

DEAR SIR: I am directed by the commission to advise you that the matter of the Greensboro Ice and Coal Company against the Southern railway and the North Carolina car service association will be heard at Greensboro, Thursday, at 2 o'clock p. m., at the court house; and I am directed to request that you have such witnesses as you desire to be present.

Very respectfully,

H. C. BROWN, *Clerk.*

447 Department of the North Carolina Corporation Commission.

Franklin McNeill, Chairman. Sam. L. Rogers, Commissioner. E. C. Beddingfield, Commissioner.
H. C. Brown, Clerk.

RALEIGH, *November* 10, 1903.

Mr. M. W. Thompson, manager Greensboro Coal and Ice Company, Greensboro, N. C.

DEAR SIR: I am directed by the commission to advise you that the matter of the Greensboro Ice and Coal Company against the Southern Railway Company and the North Carolina car service association will be heard at Greensboro, Thursday, 2 o'clock p. m., at the court house; and I am directed to request that you have such witnesses as you desire to be present.

Very respectfully,

H. C. BROWN, *Clerk.*

GREENSBORO, N. C., *Nov.* 12, 1903.

GREENSBORO ICE AND COAL COMPANY
against
SOUTHERN RAILWAY COMPANY.

he commissioners meet this day in Greensboro pursuant to notice
omplainants and defendants.
omplainants are represented by A. Wayland Cook and E. J. Jus-
attorneys.
efendant Southern Railway Company is represented by C. B.
throp, R. C. Strong, and R. R. King, attorneys.
xceptions of defendant to the order of the commission are read.
Vitnesses are examined for both the complainant and defendant.
The testimony of witnesses is taken down by the court stenographer, all of which appears of record in the case. (See case No. 1127.)
rgument of counsel is heard.
he commission announces that it will take the matter under ad-
ment.

Order.

North Carolina Corporation Commission.

RALEIGH, N. C., *December* 10, 1903.

TE OF NORTH CAROLINA ON THE RELATION OF THE NORTH
AROLINA CORPORATION COMMISSION, GREENSBORO ICE &
COAL COMPANY
against
SOUTHERN RAILWAY COMPANY

his cause coming on to be heard on exceptions by the Southern
lway Company, and evidence offered thereon by both parties,
following facts are found:
he Greensboro Ice and Coal Company, jointly with the Southern
lway Company, constructed a side track from the Southern
way into the coal and wood yard of the Greensboro Ice and Coal
npany at Greensboro, and on the end and a part of this side track
hin the yard of the Greensboro Ice and Coal Company is a trestle
h bins underneath to facilitate the delivery of car-loads of coal.
s side track is about 300 feet long.
Between the 17th and 20th of October four cars of coal were
nsported to Greensboro consigned to the Greensboro Ice and Coal
npany. The Greensboro Ice and Coal Company had a standing
er with the Southern railway to place all of their cars of freight
this side track, and offered to pay the freight on these four cars
ssurance was given that the cars would be so placed.

The Southern railway refused to place said cars on this side track, as requested by the Greensboro Ice and Coal Company, but
449 offered to place them on public team track, and did place them on public team track.

The four cars of coal were brought from points beyond the State.

The Southern Railway Company, on the 12th of October, 1903, issued notice to Greensboro Ice and Coal Company as follows:

"Please take notice that commencing 12:00 noon, October 17th, 1903, this company will decline to switch any cars to your private siding, in the yards of your company at Greensboro, N. C., and will only make delivery to you on the public team tracks of this company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations, declining to pay reasonable charges for the use of coal cars that have been detained before unloading on your private track above referred to and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control."

There was at that time, to-wit, the 12th of October, 1903, and is still pending, a controversy between Greensboro Ice and Coal Company and Southern railway about certain demurrage charges. The Southern Railway Company claimed that Greensboro Ice and Coal Company owed them $146.00 demurrage on thirteen cars of coal and wood. Greensboro Ice and Coal Company denied that they owed this or any other sum to Southern railway on account of demurrage. The facts in regard to this charge are as follows: For some years there had been a side track constructed jointly by the Greensboro Ice and Coal Company and Southern Railway Company into the former's coal and wood yard at Greensboro. The Greensboro Ice and Coal Company handles over 200 car-loads of coal per annum; and to expedite the delivery and furnish proper facilities for delivery of coal, Southern Railway Company agreed that the rails be removed from the end of the portion of this side track within the coal and wood yard, and that coal bins might be constructed under the
450 track and the track elevated and placed upon a trestle. This work was begun September 8th, 1903, and finished October 1st, 1903, Greensboro Ice and Coal Company furnished most of the material other than the rails and did all of the work except laying and placing the rails.

While the above repair was in progress, 14 cars of freight, consisting of wood and coal, consigned to Greensboro Ice and Coal Co., were transported to Greensboro by the Southern railway. Only one of the cars was ever placed at an accessible point for unloading, and this one was unloaded promptly. Greensboro Ice and Coal Company designated a side track nearest to their coal and wood yard, being part of the side track leading into said yard but outside of their enclosure, as the place at which they desired the cars placed for unloading. Southern railway did not place these thirteen cars as requested nor at any other accessible point during that period. The

ars could have been placed on the track designated. Cars for other ersons were placed on this track during this period.

The repair on the side track above mentioned was finished ctober 1st, and none of the thirteen cars above mentioned were laced on it by the Southern railway and emptied and returned y the Greensboro Ice and Coal Company within twenty-four hours hereafter. The remaining four cars were not placed on this side rack for about five days, but each one of them was unloaded within hree or four hours after they were so placed, and returned to the outhern railway.

The freight charges on the fourteen cars were paid but Southern ailway claimed $146.00 demurrage on thirteen of the fourteen ars, which charges Greensboro Ice and Coal Company refused to ay, alleging that they were improper and illegal.

We are of the opinion that no demurrage should be demanded, s Southern railway did not place the cars at the -lace designated y the shipper. We recognized the right of the Southern Railway ompany to refuse to deliver freight until all proper charges for reight and demurrage are paid, but it has no right to demand the payment of improper demurrage charges on thirteen cars 51 already delivered as a condition precedent to the delivery of four cars of coal involved in the order in this case, or to re- se to deliver the four cars on the side track jointly built and owned y the Greensboro Ice and Coal Company and themselves, when they ere requested so to do.

It is, therefore, ordered that the exceptions be and they are hereby verruled.

First exception is overruled—the reasons alleged for this exception aving no existence, in fact. Greensboro Ice and Coal Company id not owe the demurrage claimed on five cars of coal and eight cars f wood. Greensboro Ice and Coal Company did not promise to pay emurrage claim or any part of it. Southern railway was not in- uced to place cars of coal and wood on the siding above mentioned y reason of a promise by Greensboro Ice and Coal Company to pay he alleged demurrage charges. The freight on the four cars em- raced in the order and all cars up to that time delivered to Greens- oro Ice and Coal Company had been paid, and Southern railway was ot required to extend any credit or part with their legal lien upon he four car-loads of coal. It appeared that the freight had been aid and that there was no valid charge for demurrage.

Second exception is overruled. Greensboro Ice and Coal Company ad the right to have the four cars of coal carried on the side track uilt by themselves and the Southern railway, and they demanded hat they be so placed.

Third exception is overruled.

"A." The lien which Southern railway had for freight had been ischarged by payment thereof by Greensboro Ice and Coal Com- any, and there was no demurrage or other valid charge against aid company.

"B." The freight and all legal charges had been paid and therefore Southern railway was not required to extend credit to Greensboro Ice and Coal Company by the said order.

"C." The complaint of Greensboro Ice and Coal Company was filed with this commission and notice thereof was given to the Southern railway, and the Southern railway appeared in response to said notice and answered orally and made defense for Southern railway; and, after hearing and considering all of the evi-
452 dence and argument offered, the order was made by this commission.

Fourth exception is overruled. The order of this commission is not contrary or repugnant to Constitution of the United States or act of Congress establishing the Interstate Commerce Commission. The cars of freight had arrived at destination and the freight and all proper charges had been paid thereon, and this commission had the power and it was their duty to order delivery of said cars to the consignee.

This December 10, 1903.

FRANKLIN McNEILL, *Chairman.*

[Seal North Carolina Corporation Commission.]

Before North Carolina Corporation Commission.

DECEMBER 14TH, 1903.

IN THE MATTER OF GREENSBORO ICE AND COAL COMPANY
against
SOUTHERN RAILWAY COMPANY.

To the North Carolina Corporation Commission and The Greensboro Ice and Coal Company:

The defendant Southern Railway Company hereby gives notice that it appeals from the order of the corporation commission entered on October 1, 1903, requiring the Southern Railway Company to place four cars of coal shipped from points outside of North Carolina to Greensboro, North Carolina, upon a certain private track in Greensboro, and from the order overruling the exceptions filed by the Southern Railway Company to the order above mentioned, entered on December 9, 1903, and from every part thereof, and for its grounds of appeal and assignment of errors, saith:

(1.) That the corporation commission erred in entering
453 the order of October 31, 1903, upon the record then before the court (for that the order was not warranted by the allegations of fact as they in some way appeared to the commission, and) for that the order was made exparte and without giving the defendant an opportunity to be heard or answer, and that the entry of said order was not in accordance with due process of law.

(2.) For that the corporation erred in entering its order of December 9, 1903, as follows:

(*a.*) In its finding of facts from the testimony before it is not in ccordance with the evidence, and in finding that the Southern Rail-ay Company was not entitled to charge demurrage for the refusal f the complainant to accept and unload the cars consigned to it.

(*b.*) For overruling exception 1, for the reason stated in the xception.

(*c.*) For overruling exception 2, for the reasons stated in the xception.

(*d.*) For overruling exception 3, and subdivisions A, B and C hereof, and each of them.

(*e.*) For overruling exception 4, for the reasons stated in the xception.

(3.) For that the hearing and determination of the controversies nd both the orders were not due process of law.

(4.) For that the order requiring the delivery of four cars con-aining interstate freight before bulk had been broken, and while ach car was an original package, and before any delivery had been nade to and accepted by the consignee and while the same was in the ustody and possession, and under the control of the interstate car-ier, the defendant, was an attempted regulation of and interference with interstate commerce, and an unconstitutional assumption of power by the said corporation commission, and void.

Wherefore, defendant, the appellant, appealing from the orders, sked that the case be transferred to the superior court of such county as shall be designated by the commission for trial under the laws of North Carolina.

454 December 18th, 1903.

SOUTHERN RAILWAY COMPANY,
By W. A. HENDERSON,
F. H. BUSBEE,
C. B. NORTHROP AND
R. C. STRONG, *Attorneys.*

Ordered that the record in this case be transmitted to the superior court of Guilford County.

FRANKLIN McNEILL, *Chairman.*

GREENSBORO, N. C., *November* 12, 1903.

GREENSBORO ICE AND COAL COMPANY
against
SOUTHERN RAILWAY COMPANY.

North Carolina Car Service Association.

The commissioners met this day in Greensboro pursuant to notice to complainants and defendants.

Complainants are represented by A. Wayland Cook and E. J. Justice, attorneys.

Defendants, Southern Railway Company and The North Carolina Car Service Association, are represented by C. B. Northrop and R. C. Strong, attorneys, and P. R. Albright, manager of the North Carolina car service association, and R. R. King, attorney.

Chairman McNEILL: Gentlemen, we are ready to proceed with this hearing. We will hear the testimony that you have to offer now.

Mr. Strong reads exceptions.

R. C. STRONG: I object to any testimony being now introduced, inasmuch as the order has been made and the exceptions to that order filed.

Objection overruled by the commission, and defendant Southern Railway Company excepts.

455 M. W. Thompson, H. L. Hicks, J. T. Sweatt, J. C. Morris, and Milton Cunningham, witnesses for complainants, are sworn and examined.

M. W. THOMPSON, testifies as follows:

Direct examination by A. W. COOK:

Q. I believe you are Secretary and Treasurer of the Greensboro Ice and Coal Company, are you not, Mr. Thompson?

A. Yes sir.

Q. No- go ahead in your own way and tell about the difficulties you have had with the Southern Railway Company with regard to certain demurrage charges. In the first place, I want you to tell about the building of this trestle—whether or not that trestle was put there by the consent of the railway company. Was that trestle put there by the consent of the railroad company?

A. Yes sir, it was.

Q. Did they have notice on the very day and hour that that trestle —or track was torn up and the trestle to be placed? Did they have [illegible] after you had their permission?

A. Yes sir, I went and told them we were ready to go ahead with the work and that we were ready to proceed with the building of the trestle and they said it was all right—to go ahead with the tearing up of the track and they would send men in the morning to tear up the track.

Q. Do you remember about what time the track was torn up?

A. About September 9th or 10th. It was within a day or two of that time.

Q. State whether or not all that track was torn up?

A. No sir; it was not—just the far end of it was torn up.

Q. Was there any of the track or part of the track accessible or capable of being used by the ice and coal company left and not torn up?

A. Yes sir; there was.

Q. During the time that your company was building that trestle

I wish you would please state whether or not some cars came billed to the company, upon the yards of the Southern Railway?

A. Yes sir; there was.

Q. Have you the notices of those cars in your pocket, the notices that the Southern Railway Company sent you?

A. I have them at the office, not in my pocket. I have a record of them right here.

456 Q. Will you please give the court the date on which those cars arrived?

Mr. STRONG: Were those notices written?

A. Yes sir.

Mr. STRONG: Well, we submit the memorandum is the best testimony.

Mr. COOK: We will file them. Have you the memorandum in your pocket?

A. Yes sir.

Q. Let me see it? We introduce memorandum showing the day the cars is placed, the day when released, and the hour.

(Memorandum introduced and filed, marked Exhibit "I.")

Mr. STRONG: We suggest that memorandum go in subject to correction if it does not tally with the original.

Q. Now, Mr. Thompson, during the time that your track was torn up, a certain number of these cars came—how many of these cars came?

(Objection by defendant.)

Q. How many cars came on the Southern railway yards billed to the Greensboro Ice and Coal Company during the time your trestle was torn up?

(Objection by defendant.)

Q. Were those cars afterwards placed?

A. Yes, sir; they were.

Q. Now, Mr. Thompson, that was the first notice you had that any demurrage had accrued on those cars while you were building that trestle?

A. Yes, sir; first notice. There was no stated amount of demurrage given us until after the cars were placed. I had two notices before the cars were placed that there would be demurrage on the cars and I would be compelled to pay that demurrage, and means would be taken to compel me to pay them.

Q. When were those two notices served on you?

A. The two times I am referring to are personal conversations with the railroad officials. These notices were not in writing.

Mr. STRONG: Those notices were not in writing?

A. No sir.

457 Q. How long before the trestle was completed?

A. I think it was two or three days before the trestle was finished. We were making arrangements to take the cars.

Q. When was the trestle finished?
A. About 5 o'clock on October the 1st.
Q. When was the first car delivered on the trestle?
A. Four cars were placed on there at 8 o'clock.
Q. That night?
A. Yes sir.
Q. When were the others placed there?
A. Four more cars were placed on there very soon, and there was a total of nine cars placed there in the first twenty-four hours, and it took them five days to get the next five there.
Q. Whose fault was that?
A. It was not ours, because we had a force of men there to unload the cars.

(Objection by defendant.)

Q. Were you ready to receive those cars?
A. All cars placed on our track were unloaded in three or four hours. We had an extra force of men to do that work. The cars were emptied and staid there a long time.
Q. Were you ready to receive the other five cars, at all times after the trestle was completed?
A. We could not receive all five at once, because the trestle would not receive them. There was a length or period of time between each one of two days.
Q. Now, Mr. Thompson, I refer to those cars, the original fourteen I will call them, that they charged you demurrage on. What is the amount of demurrage they charged you?
A. The only bill I have seen is $118.
Q. Will you please state whether or not that at any time they offered to take less?

(Objection by defendant.)

Mr. STRONG: Was that as a matter of compromise?
A. I do not know. They said the railroad company would be willing to stand one half of that amount.

(Objection overruled.)

458 Did you ever at any time, to any railroad official, or any man, promise to pay those charges on those original cars that I have been talking about?
A. I never agreed to pay one cent or money for demurrage charges made against us.
"Q. During the time when that trestle was being built and cars were upon the yard, did you suggest to or request the car service man down on the Southern yard to place your cars on any part of your track that was partly accessible at that time?
A. I did.
Q. Who was that?
A. Mr. Alley.

Q. Describe that part of the track. Go ahead and tell what part of the track was left not torn up?

A. There were about 150 feet of the track, the entire length from the switch to the end of the trestle is 350 feet, and there was about 150 feet in the trestle—probably 45 feet were torn up—leaving 150 feet of track upon which cars could be placed.

Q. Were you needing fuel at that time?

A. Yes, sir; we were needing fuel badly.

Q. Will you please state whether or not one single car was placed for you on that track?

A. Not a single car.

Q. Will you please state whether or not anybody else's cars were placed upon that same spot while the trestle was being built?

(Objection by defendant.)

Q. I will ask him if there were not times that the track was empty and you asked them to place cars and they did not do it?

(Mr. Strong calls attention to Rule 3 of the commission and reads same.)

(Objection by defendant. Objection overruled. Exception by defendant.)

A. Yes sir; there were five cars placed on that particular track while the trestle was under construction.

Q. At different times?

A. Yes sir.

Q. Whose cars?

A. One car, I suppose, belonged to Mr. Woodroffe, the man who was tearing down the water tower, and an empty car
459 was put there for him to load. Another car was placed there for Mr. C. C. Townsend, filled with lumber, for him to unload, Another car was for Mr. Sweatt, filled with lumber, for him to unload, and the other two were placed there during night shifts, I suppose. They were simply put in there and then taken away. I thought at first they were our cars, but they were not.

Q. Mr. Thompson, state whether or not that track or any part of it was moved—that 150 feet?

A. After a certain time all of it was moved over about a foot and a half.

Q. What was done to the switch at the time?

A. I can't say of my own knowledge.

Q. Was the track ever used after that?

A. Yes sir.

Q. Before the trestle was finished?

A. Yes sir.

Q. Now Mr. Thompson, I want you to state whether or not these cars that came here during the time you were building that trestle, were ever placed at any accessible place for a team on the yards of the Southern railway?

A. They were never placed at any point accessible until put
the trestle for us to unload, so far as I know.

Q. Did you see the cars from time to time?

A. I saw them on the siding where it was impossible for a tea
to get to—on a siding at the factory.

Q. Did you ever have notice from the railroad company, at an
time, that these cars were placed at any point so that you could u
load from them with a team?

A. No sir; I never did.

Q. Did the railroad company make any demand on you for d
murrage before October 17th, except for those original cars?

A. No, sir; they did not. They made a demand at four differe
times for the demurrage on the original cars, but each time they we
refused.

Q. That was on the original cars?

A. Yes sir.

Mr. STRONG: Did you say they made those demands befo
October 17th or after?

A. They were all before October 17th.

(Plaintiff introduces letter from E. H. Coapman, superintende
of the Southern Railway Company, dated "Greensboro, N. C
August 20th, 1903." Exhibit 2.)

460 Q. Now, Mr. Thompson, I will ask you if this work wa
not done under the direction of the Southern Railway Com
pany?

A. Which work do you mean?

Q. The building of the trestle?

A. Yes, sir; it was built by Mr. Morris, a contractor here in Green
boro. The sizes of the material, etc., was furnished him by Mr
Wells.

Q. Was he a Southern railway man?

A. Yes, sir; he has charge of the A. & Y. division.

Q. What did the trestle cost you?

A. It cost us about $600.

Q. What part of the trestle did the railway company furnish?

A. I don't know that they furnished any part. They used th
same rails that was in the other track and spiked them down, afte
we did the grading.

Q. Whom did the rails belong to?

A. To the Southern railway.

Q. Subject to whose approval was this trestle built?

A. Subject to the approval of Mr. Wells.

(Plaintiff here introduces embargo served on them by the agen
of the Southern Railway Company, dated "Greensboro, N. C., October
12th, 1903." Exhibit 3.)

Q. Now, Mr. Thompson, I wish you would state to the court

whether or not there were any cars in the possession of the Southern Railway Company, at the time this order was sent to you?

A. Yes, sir.

Q. Were they not delivered to you?

A. Yes, sir.

Q. I will ask you if they did not deliver all of the cars that they had on hand and that had arrived prior to this date?

A. They delivered all the cars that they had on hand and they also delivered a car after notice was served on me.

Q. I will ask you if one single, solitary car was detained on your track—this notice says they were detained?

A. No, sir; all cars placed on our track were unloaded in a very few hours.

Q. How long did it take you to unload the cars?

A. The four cars of coal?

Q. Yes, sir.

A. It would have taken about two hours. I had a force of about twelve men who were at work there.

461 Q. Have they, as a matter of fact, made any claim on you for demurrage for cars detained on your private track over there?

A. Have they ever at any time?

Q. Since this trestle was built?

A. No, sir; no claim has bee- made on us for cars detained since the trestle was built.

Q. They could not have made any before the trestle was built because your track would not admit any cars, could they?

(Objection by defendant.)

Q. This order says, "Of your refusal to comply with car service regulations to pay reasonable charges for the use of cars that have been detained before unloading on your private track." Were there any detained on your private track?

A. They were never on our private track or on any tracks where we could get to them.

W. Mr. Thompson, I will ask you if it is practicable to run your ice and coal business and unload your cars from any tracks other than your private track, or from a team track?

(Objection by defendant. Objection overruled.)

A. It is not. We had 44 cars on hand within the last 40 days, and we could not handle them.

Q. How long would it take you to unload twenty cars with three teams?

A. It would depend on the nature and size of the car. An average car of thirty tons, three teams would get it out in a day. Well, I reckon it would take a day and a third.

Q. Would it be practicable for you to unload from the public team track without incurring demurrage?

A. It would not. We could not do it.

Q. How much does your freight business with the South amount to in a year?

(Objection by defendant. Objection sustained.)

Q. How far is the farthest end of your trestle from the depot of Southern Railway Company?

(Objection by defendant. Objection overruled. Exception.)

A. One hundred yards.

462 Q. How far is it from the right of way of the North Ca lin railroad—the farthest end of the trestle?

A. About 75 feet.

Q. Is there anything that makes it more convenient for the Sou ern to get to it than any other track?

A. No, sir; it is exactly the opposite. It is more convenient th any other place they could possibly have.

Q. How far is it from the C. F. & Y. V. railway right of way the farthest end of it?

A. The farthest end of the switch?

Q. No, of your trestle.

A. It is about 100 feet, I should judge.

Q. Mr. Thompson, how many cars has the railroad company g of yours now?

A. I think about 18.

(Plaintiff introduces letter from W. E. Coffin, agent of the Sou ern Railway Company, dated "Greensboro, N. C., November 11 1903." Exhibit 4.)

Q. Mr. Thompson, have you paid the freight on all these ca

A. I believe I have paid freight on all of them but the last one two. I have paid on all except those.

Q. Have you asked or requested the railroad company to pla those cars on your track?

A. I have numerous times. The last time I sent a written requ or demand for them.

Q. Have you had any conversation with them about deliveri those cars, since the order of the commission was made?

A. Yes, sir.

Q. Have they placed a single car upon your track?

A. Not one.

(Plaintiff introduces letter from W. E. Coffin, agent, of the Sout ern Railway Company, dated "Greensboro, N. C., October 31st, 190 Exhibit 5.)

(Plaintiff also introduces letter from R. O. Whitaker, yard mast of the Southern Railway Company, dated "Greensboro, N. C., N vember 7th, 1903. Defendant objects upon the ground that M

Whitaker is a proper person to testify in regard to the writing of the letter, and it has not been properly introduced, and it has not been shown that R. A. Whitaker has authority from the
463 Southern Railway Company to bind that company with the expression of any opinion of his.)

Q. Whose signature is that, Mr. Thompson?
A. I think it is the signature of Mr. Whitaker. I have seen his signature a hundred times.
Q. What position does he hold with the Southern Railway Company?
A. He is the yard master and has charge of placing cars in Greensboro.

(Plaintiff reads letter from R. O. Whitaker, above referred to and asks that it be filed. Defendants again object upon the further ground that it is immaterial. Objection overruled and letter filed. Exhibit 6. Exception by defendant.)

Cross-examination by R. C. STRONG:

Q. Mr. Thompson, how much did you say you expended upon elevating the tracks in your own yards, in order to have the coal bins underneath?
A. About $600.
Q. Did you not spend that $600—was not the sole purpose of spending that for your own convenience for handling your coal?
A. It was facilitating our business.
Q. Did you not spend the $600 for the sole purpose of facilitating your own business?
A. I said it was for facilitating our business.
Q. It was not for the benefit of the Southern railway?
A. Certainly not.
Q. In making this alteration—in erecting this trestle—I understand that the Southern railway only furnished the rails and that you did all the other work at your own expense?
A. They furnished the rails and laid the rails. We did the grading and built the trestle at our own expense.
Q. Who took the rails up that were in your yard first?
A. The rails were removed by our men under railroad instructions. There was a force of men sent there by the railroad company to take the rails up, but most of them were up by the time the crew got there.
Q. Whose contractor was Mr. Morris?
A. He was my contractor at the present instance.
464 Q. And he did the work?
A. Yes sir.
Q. Did he have any supervision in the laying of the rails?
A. No, sir.

Q. Now, I understand you to say that the Southern Railway Company refused to place cars upon a certain piece of track upon which there were placed afterwards cars for other people. Was not that track outside of your yard?

A. Yes sir, it was a public team track.

Q. When you asked the Southern railway to place cars upon this particular track for you, I understand you to say there were no cars on that track?

A. I did not say that.

Q. But is it right?

A. There were cars on there at different intervals. We repeatedly asked to have cars placed there and we wanted the same privilege that other people had. They could have been placed there and we would have had fuel for our boiler.

Q. Is there not a side track that runs to the other side of your yard right close to your fence?

A. Yes sir.

Q. Didn't the Southern Railway Company ask to place the coal there?

A. No sir.

Q. Never did?

A. No, sir. We would not have unloaded there if they had.

Q. Did they not offer to do it, though?

A. I will say they did not.

Q. Where did you buy your coal?

A. We buy it from various places. Some in West Virginia and some in Tennessee and other places.

Q. Mostly in those two places?

A. Yes, sir.

Q. You do not buy any coal in North Carolina, do you?

A. No sir.

Q. The four car-loads of coal, subject to the order of the commission and to which we filed exceptions, came from without the State of North Carolina, did they not?

(Objection by plaintiff. Objection overruled.)

A. Yes, sir; they did. The cars of wood came from within this State and the cars of coal came from outside of the State.

465 Q. Suppose that the track was raised in order to enable you to put the bins for coal under it in your own yard and stop on you, own line, how many feet above the ground would that have left your rails above the other rails of the track?

A. Above the other rails? After they raised the trestle? The rails were on a slope, and I can not tell you the exact distance.

Q. Suppose the rails on the outside of your yard had not been raised and the track in your yard had the rails just as they are now, how much higher would your rails be than those on the outside of your yard?

. That is pretty hard to tell, because the rails on the outside
ot on a level. The track was never level.
. The railroad company in shifting cars upon your private side
, as it now stands, would have to traverse from the main line a
of its own switch to get to your side track?
. The siding running in to our place comes off by the A. & Y.
line, I believe—that is it comes from the outside track there.
. In making that elevation that you have been speaking of, was
t necessary for the Southern railway to raise its own rails so
make the grade running up to your property?
. Yes, sir; we raised the rails up about the same grade that they
iously run down.
. The Southern Railway Company had to raise its own rails to
e the grade?
. It did not raise the rails. We did the grading and put the
there ourselves.
. Upon the Southern railway's yards?
. It is not even a part of it, but the lower end of it comes on
claimed by the Southern railway.
. But the South rn Railway Co. had to do the work on its
to make the grade?
. No, sir; they did not have to make any grade, the grade was
dy furnished them. All they had to do was to connect it up.
. Did you do any grading for the Southern Railway Company
its own yard in order to raise this track?
. That is a fine point because the lower end of it where it leaves
iding is going upon a gradual slope and there would be only a
very few inches difference. We filled that in and slided the
track over about half a foot and they there would be no dif-
ference at that point.
. So you mean to say that after you had raised track on your
yard, there was no work necessary to be done by the Southern
way Company in order to make the proper grade—to make
rails fit in with your rails?
. We had nothing to do with any rails.
. Did not the Southern railway find it necessary to do some work
rder to complete the grade to run cars into your private siding?
. They may have finished it up, but the grade was all established
it was just simply a little finishing work for them to do.
hairman McNeill: How is it material about how much they did?
y laid the rails.
. Now, Mr. Thompson, taking this as a line of your own prop-
and taking this as a line of the railroad running into your
erty, of course you raised this end to get the bins underneath the
k. (Mr. Strong then explained the situation and location of
track.)
. Our track does not come upon the property of the Southern
way.
. Whose property?

A. It first touches the property of W. D. McAdoo and then the Guilford roller mills.

Q. Is all of that in the enclosure of your own yard?

A. No sir,

Q. Did the track there run originally across these two separate pieces of property?

A. Yes, sir.

Q. It makes no difference then as to the effect of the question. Didn't they have to raise the track between your line and the line of the property next to you, and from there on out, so as to make grade sufficient?

A. The relative position that the track occupied before the trestle was erected and afterwards is different—of course, it was raised, but we did all of the work. We raised the ground and threw the track up there.

Q. Outside of your own property?

A. Yes, sir; so that the railroad company would be at no expense.

Q. So the railroad company did fix the rails upon that? In your letter to the corporation commission you said that you had
467 been endeavoring for the past two years to secure the erection of a trestle to facilitate handling your coal. Is that true?

A. Yes, sir; by nature of the contract they wanted us to sign.

Q. Who wanted you to sign?

A. The Southern railway.

Q. "But we were unable to do this until just recently when permission was granted to elevate the track we had been using for unloading our cars. The rails were removed under railroad instruction, we built the trestle at our own expense, and did the necessary grading ourselves, the railroad company replacing the rails." Is that right?

A. Yes, sir.

Q. Mr. Thompson, were you not notified on the 9th day of October that the railroad company would not switch cars upon your private siding?

A. On the 9th day of October?

Q. Yes sir,

A. I could not state what day it was.

Q. How long prior to it was the time you ordered the cars on which the demurrage charges have accrued?

A. The last batch of cars?

Q. How long was it after you received notice that the Southern Railway Company would not put any cars on your private siding that you ordered these cars upon which demurrage charges have accrued?

A. I do not know—the cars were coming in all the time.

Q. How long did you order cars after this time? How long after you received notice that the cars would not be put upon your private siding did you order these cars, which have since come in and demurrage has accrued?

A. I have not ordered any since.

Q. They just kept coming in of themselves?

A. We have a regular standing order on coal and wood.

Q. Did you give these parties any notice that you were not able to have your cars put upon the private siding, and that it would be impossible for you to handle the cars as tendered to you by the railroad company?

(Objection by plaintiff. Objection overruled.)

A. No, sir, we did not. The orders were already issued to
468 place these cars, and we thought it would be done.

Q. I understand that this private siding was put in at your own expense and at your own request, and that you ha dfor two years been trying to make some arrangement for your own convenience, to have this siding put in?

A. I have been deprived of the privilege for two years—yes, sir.

Q. Did you not, in a letter to Colonel Andrews, state that you would not receive any cars unless they were put upon this private siding?

A. Yes, sir.

Q. You informed him of that?

A. Yes, sir; I informed him that I had so stated to the agent here. I made that statement; yes, sir.

Q. Did you not write Colonel Andrews a letter, in which you said, "Since the enclosed order has gone into effect, four cars have come on the yard, and these have been marked up to the team track according to order, they have refused to turn the same over to us and make delivery on our trestle as instructed. We have refused to accept these cars unless placed as per our instruction, and also to pay freight for same unless assurance is given that these cars will be placed as instructed"—did you not write that?

A. I wrote that; yes, sir.

Q. Did you not refuse to take any of these cars unless placed on your private siding?

A. What cars?

Q. Any cars that were here or that have been here.

A. No, sir! We have unloaded one or two cars on the team track.

Q. How many cars did you say you have unloaded from the public team track?

A. I believe it was only one car. We have had two or three consigned to other parties that were unloaded outside of our yard.

Q. Was the car that you unloaded number 9130?

A. Yes, sir. It was not intended for our yard, but went to outside parties.

Q. And that is the only car that you have unloaded, and you refused to accept all of the others unless they were placed on your own private side-track?

469 A. Unless placed in accordance with the demurrage rules and regulations.

Q. I am not asking you for a construction of the rules of the corporation commission. I will ask you if you did not refuse to take any cars from the Southern railway unless placed on your own private side track?

A. Yes, sir; we refused to take some.

Q. Unless placed on your own private side track?

A. We offered to take some, not all. They have never offered some of these cars on the team track.

Q. And did you not refuse to take them because they were not placed on your own side track?

A. We certainly did.

Q. You stated in your direct examination the number of cars that you now have here upon the yard tracks of the Southern railway as being how many?

A. I stated about eighteen.

Q. You knew of the arrival of all of these cars that have come to you since you have elevated your track on your own premises?

A. I have had no official notice of it.

Q. You knew of it?

A. I have heard that there were cars here consigned to us.

Q. You knew that the cars were here? Did you go out and look for them and find out how many you had here?

A. I have seen several of them on the yard, but I have not gone out and looked for the cars.

Q. You did not do so because you refused to take them unless they were placed on your own private siding?

A. I did not do it for that reason at all.

Q. For that reason you did not care whether they were here or not?

A. I did not go to look for them, and it would not have done any good to have seen them there. I wanted the cars and needed them. I am needing them now.

Q. The Southern Railway Company never requested you at any time to elevate a track upon your own private yards? You are the one that made the request?

A. Oh, yes. I would like to supplement that question, and state that I have had no official notice, but I have had numerous requests from those who had to do the work, that they would like to
470 have that track, and that it was necessary that something should be done there to facilitate the handling and moving of these cars.

Mr. JUSTICE: You mean some one employed by the Southern?

A. Yes, sir.

Mr. STRONG: You say, Mr. Thompson, that you paid the freight on these car-loads of coal, etc.? You have already paid the freight?

A. On which cars?

Q. On the original fourteen.

A. Yes, sir; I have paid the freight on those.

Q. And on the cars that we are claiming demurrage on now—I understood you to *that* that you had paid all except two?

A. You rendered bills to us for demurrage for original lot of cars that came before the trestle was completed, and also on those that you are now holding and refuse to deliver to us.

Q. I am not talking about demurrage, but the freight I understand you to say that you have paid freight on all but two?

A. That refers to the last batch of cars that came since the cars were refused to us. I think there is one no- paid, and possibly one more.

Q. And that includes the cars embraced in the order of the corporation commission, that you paid the freight on?

A. I have paid freight on all. You count the original four as being cars specified in the order of the commission. I don't know what cars — there referred to, but I wrote them letter stating that four had arrived. Up to the present time eighteen have arrived, which would come under the same head.

Q. So you do not know whether you have paid the freight on the original four or not?

A. I presume that I have, as they were the first four.

Q. Then you have paid the freight charges?

A. I presume so.

Q. Now, I will ask you, if you did not pay these freight charges in accordance with instructions received from the North Carolina corporation commission, in a letter dated October 26, 1903, which says: "That if you have paid the freight, the company should
471 place the cars on the siding as desired, and the Southern railway has been so notified"—did you not pay the freight in pursuance of that suggestion from the corporation commission?

A. Yes, sir.

Q. You did not pay it before then?

A. No, sir; not up until that time.

Q. Awhile ago, I understood you to say that inasmuch as you could not get the cars even if they were here, you paid very little attention as to whether they were here or not?

A. No, sir; I did not say that.

Q. What did you say?

A. I said I did not attempt to go around the yards hunting to see if those cars were there.

Q. You had not been trying to keep up with them?

A. I did not say that—you attempted to construe it that way.

Q. What did you say?

A. I said I did not hang around the yard.

Q. Nor did you go around the yard to see if they were placed accessible for unloading, did you?

A. I went around to see that some of them were placed on the team tracks.

Q. Accessible to wagons?

A. No, sir; not accessible to wagons.

Q. When did you do that?

A. I could not state exactly the time. You have your record when the cars were there.

Q. A week ago? I am not speaking of my records. I asked when you saw that those cars were on the team track?

A. Just wait a minute. October 30 there were several cars th Three of those cars were removed on October 31. They had b placed there for several days, and the yard master took them av to make room for other freight.

Q. Don't other coal people, or people who buy coal by the loads, take their coal from the team tracks of the Southern railw in its yards in Greensboro here?

A. No one doing business here that has scales. Some individu do.

472 Q. I say those that buy coal by the car-loads?

A. I said some individuals do.

Q. Does not the gas company?

A. It does not have to go over the scales. It is hauled imm diately to the gas house.

Q. But don't they take coal from there?

A. I do not know whether they do or not. I have seen coal tak from there, but I do not know who takes it.

Q. Did I not understand you to say that the four car loads coal, the subject of the order of the commission—the corporati commission—came from West Virginia and Tennessee?

A. I said I presume they did, as we buy most of our coal fro those two points. I will not say positively—I do not know.

Mr. NORTHROP: Do you buy coal from any other points?

A. Yes sir.

Q. What other points?

A. Pennsylvania.

Q. These four cars of coal might have come from Pennsylvania

A. I do not know—I do not think they did.

Q. They came from either of these two points—West Virginia Tennessee?

A. They might have.

Q. If those cars were coal, they came from either West Virgini Tennessee or Pennsylvania? If wood they came from inside of th State?

A. Yes sir, I suppose they did.

Redirect examination by Mr. COOK:

Q. Mr. Thompson, you referred to the track as it originally was i your yard, before it was taken up. Will you please state how tha track was, and whether or not there was a slope going into the yard

A. There was such a grade there that I have seen an engine pulling out one empty car.

Q. Have you seen an engine put cars in there since the trestle ha been disturbed—since the trestle has been completed?

A. Yes, sir.

Q. Did the engine have any trouble with a car of coal?

A. No, sir.

473 Q. Since the embargo of October 12, have you demanded cars to be placed on your siding?

A. Yes, sir.

(Objection by defendant.)

Q. Did you at any time refuse to receive any cars on the team track before your track was taken up? These cars that came while the trestle was being constructed?

(Objection by defendant. Objection overruled. Exception.)

A. No, sir, I did not; they were never offered to us.

Q. Has the railroad company delivered you any cars, in accordance with the order of the corporation commission?

A. No, sir, they have not.

Q. You were asked about two bills for demurrage. Please state to the court which two bills you refer to, and separate the two.

A. The first bill is the original bill of demurrage, which we have refused to pay.

Q. On what account?

A. We refused to pay that because the cars had never been delivered to us, and we are entitled under the rules to demurrage ourselves. We refused to pay it also because the building of the trestle had been delayed by the Southern railway itself from eight to ten days, and after the trestle was finally completed there was a delay of two or three days in placing cars. All of these was due to the Southern railway, and we felt that we were entitled to demurrage also.

Q. You refer now to the original fourteen cars, before the trestle was completed?

A. Yes, sir.

Q. On what account did this other bill arise?

A. We received notice from them two or three days ago, stating that cars were being held on the yard, and that the demurrage up to that morning 7 o'clock amounted to so much.

Q. Were those last cars the ones that you had been trying to get on side track by the order of the commission?

A. Yes, sir.

Q. What do you mean by delaying the trestle, Mr. Thompson?

A. They delayed the building of the trestle by refusing to turn over timber which was already on the yard, and the crew was

474 waiting for this. One car came on the yard and waited some six days, I believe.

Q. How did that come, by freight?

A. Yes, sir.

Q. I believe you said it was to be used for the construction of the trestle?

A. Yes, sir.

Q. Was there any other delay?

A. Yes, sir; there was delay in the ironing. The trestle was completed and they were waiting for a car of ties. About seven eight hours after we received the last car of timber—well, the tres was completed and the stringers up, and they were waiting for car ties. Mr. Morrison said if he could get the car of ties and go on wi the work, he could turn the trestle over in twenty-four hours. T car of ties was on the yard, but we could not get them. And the ne delay was in the iron. I told the men that we were ready for the and they could do the iron work. The ties had been strung. Th was on Tuesday. I believe the trestle was turned over on Frida The crew did not come to iron the trestle until twenty-four hou after that. I told the man there was work they could do right up the ironing, but they did nothing to expedite the work. They di not not come until the work was done on the trestle. It was two an a half days after I told them to do the work until they did it.

Q. Speaking of this original demurrage, state whether or not the were cars of coal or wood upon which the original demurrage a crued. Were not some of those cars of wood?

A. Yes, sir; some of them were of wood.

Recross-examination by R. C. STRONG:

Q. You say that fourteen car-loads of coal came in before you be gan the construction of the trestle, and were never tendered to you

A. I did not say fourteen cars.

Q. How many did you say?

A. I said fourteen cars, but did not say of what. Some were wood and some were coal.

Q. They came in before you began the construction of your trestle?

A. No, sir.

475 —. They arrived before the completion of the trestle?

A. Yes, sir.

Q. Why did you keep on buying your wood and coal while the trestle was being built, when you knew that you could not unload on your yard?

A. We did not keep on buying—we had the order already standing.

Q. Now, I will ask you about that car of ties. Was that not shipped here to the order of the W. W. Mills Lumber Company?

A. I do not know.

Q. It was not shipped to you?

A. No, sir.

—. You do not know whether (it was) shipped to W. W. Mills Lumber Company or to whom it was shipped?

A. No, sir.

Q. The car of lumber, the same way—you do not know who it was shipped to—whether the Southern railway or any other person?

A. No, sir; I understand——

Q. I do not want you to understand.

A. You ask of my own personal knowledge?
Q. Yes, sir.
A. I do not know.

Examination by Chairman McNEILL:

Q. What cars came in first of these fourteen—can you give me the numbers and date of arrival?
A. Yes, sir; I think it is in the memorandum.
Q. You say car No. 46826 arrived 9-14. It was placed 10-1 at 8 p. m. You mean placed where?
A. Placed on the trestle, as directed.
Q. Placed on your track?
A. Yes sir.
Q. Then you say that was released on the 2nd at 1 a. m.?
A. Yes, sir.
Q. Mr. Thompson, give us the particulars about that. Was that car ever placed on any team track accessible to you?
A. No sir.
Q. Before that time?
A. No, sir.
476 Q. Did you ask that it be placed anywhere?
A. Yes, sir.
Q. Where?
A. Placed on that piece of track outside of the yard.
Q. Next to you?
A. Yes, sir.
Q. Well, was that coal or wood?
A. The first car?
Q. Yes.
A. I could not say. Mr. Alley reports the cars, and he said there were several cars on the yards for us, and I could not state which were coal and which were wood.
Q. Do you know how many cars of coal and how many of wood there were?
A. Of the original fourteen?
Q. Yes.
A. I could not say without referring to the cards. I think they were nearly half and half.
Q. From what point was the wood shipped?
A. The wood all came from within the State.
Q. Some point in the State?
A. Yes, sir.
Q. What point?
A. Most of it came from Manchester.
Q. The next car is 10514; arrived 9—19; is that when it arrived?
A. That record is taken from the record furnished by the road.
Q. Was that car ever placed? When was it placed on a team track accessible to you?

A. The first time it was placed was on our trestle.

Q. Then it was placed the first day of October at 8 p. m., and emptied the next day at 4 a. m.?

A. Yes, sir.

Q. Car No. 12172; arrived 9—19, placed 10—1, 8 p. m., released by you at 7 a. m. on the 2nd of October?

A. Yes, sir.

Q. The first four cars seem to have been placed at the same time?

A. Yes, sir.

Q. And they were never placed on any team track accessible to you until this date?

A. No,sir.

Q. And you requested that they be placed?

A. Yes, sir; on the outside, close to us.

477 Q. Now, I find here three other cars—6104, 6047 and 7565—which seem to have arrived at 9—29, and to have been placed on the 2d of October, at 8 a. m., and to have been released at 11 a. m. Were those cars ever placed on any team track accessible to you?

A. No, sir.

Q. Did you ask that they be placed?

A. Yes, sir; I requested that all cars be placed, but as to these specified cars, I can't say. Mr. Alley reported these cars to me, and I requested him to place every car that came in subsequently, or that was here then, on that track close to us.

Mr. JUSTICE: He had general instructions as to the placing of your cars?

A. Yes, sir; he has general instructions where to place them. I do not know that I told him that the specific cars be placed. I will state that none of them were ever placed on any accessible point.

Q. It is suggested that I ask you did you ever decline or refuse to pay any demurrage until this accrued?

A. No, sir. In all my experience, there has never been but one or two demurrage charges against us.

Q. You never disputed any demurrage?

A. No, sir.

Q. How about these four cars—I understood you to make the same statement with reference to all the other cars that were finally placed on your track and unloaded there. They were not placed on any team track accessible to you?

A. No, sir.

Q. The four cars that you wrote the commission about—were they ever placed on any team track accessible to you?

A. Now you see I had been receiving notices each day. Cars were coming in every day. Up to the time I wrote you, there had been four cars. I have a record showing that the cars were placed on the team track. I do not think I ever stated to you the number, and we have no means of knowing these four cars. I stated to you that

four cars had arrived and the delivery had been refused, on these and all subsequent cars since that time.

478 Q. These notices that you propose to file will show the date of arrival?

A. They will show the date of arrival as the Southern railway has it. I do not know as to the accuracy of their records, however.

Q. That is all you know about them?

A. Yes, sir.

Q. You paid the freight on all of these cars except some which have come within the last day or two?

A. Yes, sir.

Q. What was it you said about this material that came in for the construction of the trestle?

A. I said the delivery of that was delayed after it came on the yard.

Q. Was it consigned to you?

A. No, sir; it was not consigned to us.

Q. Did you have an order for it?

A. No, sir; Mr. Morris, our contractor, bought this through the Mills Lumber Company.

Q. Was it shipped to him?

A. No, sir; it was shipped to Mills Lumber Company.

Q. Did he notify the railroad company that it was for your yard?

A. I do not know. Mr. Swpeson is provided——

(Objection by defendant. Sustained.)

Q. Do you know of your own knowledge?

A. I do not, sir.

Mr. JUSTICE: Mr. Thompson, you told the court that you had refused to accept these cars that came in since order of the commission had been made. You refused to accept them on the ground that they were tendered to you on conditions made in this embargo? They offered them on the team track after your trestle was completed, and you ordered them on your side track?

A. Yes, sir.

Mr. STRONG: When you say that the cars were refused, you mean delivered upon your own side track?

A. Yes, sir; delivery on our own siding is refused.

CHAIRMAN: You mean they refused to place the cars on your own siding?

A. Yes, sir.

JUSTICE: And you refused to haul it from the team track?

479 A. Yes, sir. We told them we could not possibly do business by receiving freight that came on the team track over there.

H. L. HICKS testifies as follows:

Direct examination by Mr. COOK:

Q. Where do you work, Mr. Hicks?

A. For the Greensboro Ice and Coal Company.

(Plaintiff then asks that J. T. Sweatt go on the stand, as he was anxious to leave.)

J. T. SWEATT testifies as follows:

Direct examination by Mr. COOK:

Q. Mr. Sweatt, I believe you are with the W. W. Mills Lumber Company?

A. Yes, sir; I am manager of the purchasing department of that company.

Q. Did your company, under your supervision, furnish any lumber for the building of this trestle for the Greensboro Ice and Coal Company?

A. Yes, sir.

(Objection by defendant. Objection overruled.)

Q. Did you see a car of ties that came for the W. W. Mills Lumber Company, that was for this particular trestle, on the yard of the Southern Railway Company, and request that it be placed?

A. Yes, sir.

Q. How long was it before that car was placed?

A. About four or five days.

Q. Where was it in the meantime?

A. The yard conductor told me that it was over at the cemetery somewhere, on a side track to get it out of the way.

Q. Do you know anything about the trestle at that time—how much work was done on it at that time?

A. No, sir; I cannot say exactly. Mr. Morris had come to me and asked me to hurry his stuff up, and said he was needing it bad.

Q. Could the trestle be finished without that lumber.

A. No, sir.

480 Q. Do you know anything of a car of stringers that came for that company, also?

A. Yes, sir.

Q. Did you see this on the yard of the Southern Railway Company?

A. I had a notice of the arrival of this.

Q. How long before it was placed?

A. I do not remember—some two or three days.

Q. I will ask you whether or not you saw on that part of the track not torn up that leads to the trestle of the Greensboro Ice and Coal Company—whether or not you saw any cars on that track during the building of the trestle?

(Objection by defendant. Objection overruled. Exception.)

A. Yes, sir.

Q. What cars do you refer to, Mr. Sweatt?

A. I have seen a car of lumber standing on the track being unloaded, and I have seen a car being loaded there with the old tank material that stood on South Elm street.

Q. Do you know when that trestle was completed?

A. No, sir, I do not. I can not remember the dates.

Q. Is that track the most convenient track for the ice and coal company's yard, for them to unload from?

A. Yes, sir, I suppose it is.

Cross-examination by R. C. STRONG:

Q. To whom were those car-loads of lumber and strongers shipped?

A. To the W. W. Mills Lumber Company.

Q. If they were shipped to the W. W. Mills Lumber Company, the railroad company could only deliver to the W. W. Mills Lumber Company, outside of other instructions?

A. They were placed according to my directions.

Q. Therefore, if you did not give instructions as to the placing of these cars, they could not be placed?

A. No, sir.

Q. And you gave no directions?

A. I did.

Q. When?

A. At the time I saw the cars on the yard. I saw the
481 yard conductor going in with it, and I asked him to place it in our yard. He said he was moving it out of the way then, but he would come back and place it; but he took it over to the cemetery and left them—burried them.

Q. Was not the proper person for you to give your directions as to the placing or delivering of those cars to some one else? Was it not the agent and not the yard conductor?

A. We have not been doing that. We would go to Mr. Alley or the first one we saw.

Q. You do not know whether or not that is the proper way?

A. I know what has been the custom in regard to placing cars.

Q. How do you know what has been the custom?

A. I just told you what it was.

Q. How long have you been connected with the W. W. Mills Lumber Company?

A. Since the 18th of February.

Q. Of this year?

A. Yes, sir.

Q. How many cars came for you and to be delivered under your directions?

A. All of them came consigned to the W. W. Mills Lumber Company.

Q. You did not notice whether or not cars placed upon this little

bit of track outside of the yard of the Greensboro Ice and Coal Company, which was on a down grade, and had to be chocked to make them stand?

A. No, sir, I did not notice that.

Q. Is it not a fact that the grade is so heavy that you have to chock the cars to make them stand?

A. Yes, sir, since they have raised the grade.

Q. Do you know whether or not this little track we have been speaking about is considered a team track in Greensboro?

A. I do not. I don't know the tracks by their names at all.

Redirect examination by Mr. JUSTICE:

Q. Mr. Sweatt, I will ask you if you don't know of your own knowledge that this track is used frequently by other parties than the Greensboro Ice and Coal Company?

482 A. Yes, sir; I have seen other parties use it.

Q. That track in front of the Guilford roller mills?

A. Yes, sir.

Recross examination by Mr. STRONG:

Q. Was that since the raising of the track that he has seen this?

A. Yes, sir.

Re-redirect examination by Mr. JUSTICE:

Q. How about before?

A. Yes, before the track was raised too.

Mr. J. C. MORRIS, testifies as follows:

Direct examination by Mr. JUSTICE:

Q. Mr. Morris, where do you live?

A. 203 North Mendenhall street.

Q. What is your business?

A. Contractor.

Q. Did you have the contract to build the trestle for the Greensboro Ice and Coal Company?

A. Yes, sir, I had the contract.

Q. What part of the work were you to do?

A. My men were to erect it.

Q. Were you delayed in any way?

A. We were delayed in the latter part of it some.

Q. In what way?

A. For the want of ties.

Q. Where did you get your ties?

A. Bought them from the W. W. Mills Lumber Company.

Q. How were they brought to Greensboro?

A. By freight, I suppose.

Q. Did you see them on the Southern Railway yard?

A. I saw them on the siding.

Q. What siding.
A. Along the siding of the Greensboro Ice and Coal Company's
rd.
Q. About what time were they unloaded?
A. I do not know.
Q. Is that the siding that leads into the Greensboro Ice and Coal Company's yard?
A. No, sir.
Q. Another siding—how close to it?
A. I should judge it is 300 feet from it.
Q. How long after those ties came were you delayed in the construction of the trestle?
A. I could not tell you. I am away from home a great deal, and
o not (know) about that.
Q. How long were you delayed for lack of material?
(Objection by defendant. Objection overruled.)
. I cannot answer that. As I have said, I am not here much of
time, and the work was mostly done by my superintendent.
. Did you have a force of men there?
. Yes, sir; but I had to reduce the force at the last.
. Did your men stop work on account of these ties not being
e when you needed them?
. We had a force of seven men there at work, and we reduced it
our men.
. On account of what?
. On account of the ties.
. How long was your force reduced?
. We never re-instated it at all.
How long after you reduced it before you got the ties?
I do not know. I did not keep any data of it.
Can you give me an idea?
I do not know that I could give it close. I could only give an
My superintendent keeps up with that. I can not say. You
from time that we reduced the force on account of not having
until the ties came?
Yes, give me the best estimate you can.
I might not be within two or three days of it.
But give me your best estimate.
(Objection by defendant.)
I could not tell positively.
Was it as much as a week?
(Objection by defendant.)

A. About the only thing I am positive of is that we reduced our force for want of some ties, and we were not able to put them back any more.
I will ask you to refresh your memory and tell us if you did

not state to Mr. Thompson a week before that you could finish that trestle in twenty-four hours if you had the ties?

A. Yes, sir; we only had 40 ties to lay and 300 feet of filling to put it. Mr. Thompson was pushing me for the trestle, and I told him we could get — in in twenty-four hours if we got the ties. We only had 150 lineal feet to put down, with one in four feet, and we filled in between, which would be about 40 feet or less. I do not think twenty-four hours would have been any exaggeration at all, if we could have gotten the ties.

Q. These were the ties which you received from Mr. Sweatt, the manager of the Mills Lumber Company?

A. Yes, sir; part of a car-load.

Q. Mr. Morris, did you make any effort with the railroad people to secure the ties? Did you have any conversation with any of the employees?

A. Yes, sir; I went down to see the yard master, but I could not find him. I found the yard conductor, but he had no positive information, and I not having any particulars, I could not talk very intelligently. He told me he thought they had taken the cars out to White Oak. He was not positive about the cars himself, and I could not give him the numbers or any particulars.

Q. Did not one of the employees tell you that he did not know, but he thought they were at White Oak?

A. Yes, sir.

Q. How far is White Oak?

A. About a mile and a half by track.

Q. Did you make any further efforts to get the cars after you knew they were at White Oak?

A. I complained to Mr. Sweatt, and he took the matter up, I think.

Q. How long was it after you had this conversation with the yard conductor until you got the ties?

A. I do not know.

Q. Was it as much as a week or seven days?

485 (Objection by defendant. Overruled.)

A. I do not think it was seven days. The reason that I am not intelligent about this is because I am out of town and my foreman did this work, and I only had general supervision over it. I can not tell you very intelligently about it. I did tell Mr. Thompson we could build it in twenty-four hours if we had the ties, and I do not think it took more time than that after we got them. My first intelligence of the cars being in Greensboro was when they were unloading them.

Q. Had you been told they were here before you told Mr. Thompson that you could finish it in twenty-four hours?

A. I do not remember about that.

Cross-examination by Mr. NORTHROP:

Q. Mr. Morris do you know anything about the negotiations preceding the building of this trestle between Mr. Thompson and the

Southern Railway Company? The trestle was built at the request of Mr. Thompson, and he got the consent of the company to allow the building of same?

A. I think Mr. Thompson went and got the regular consent to build the trestle. This is my understanding.

Q. It was done at his request?

A. That was my understanding. I saw no correspondence.

Q. He employed you to do it?

A. Yes, sir, and paid me.

Q. Did Mr. Thompson tell you that he had gotten the consent of the company?

A. That was my understanding.

Q. Did you tear up the rails?

A. No, sir; I never saw them torn up.

Q. You saw the track after it was completed, didn't you?

A. You mean before the cars went on it? I was there about the time it was completed.

—. What portion, just as it leaves the line of the Southern until it gets well into Mr. Thompson's yard, it is not quite a grade or slant?

A. I think it is about two per cent, or it may be three per cent.

486 (Objection by plaintiff.)

Redirect examination by Mr. JUSTICE:

Q. Do you know anything of the delay in putting down the iron, after the trestle was waiting for it?

A. That is a question that is quite hard for me to decide. If I had been putting the rails down, I could have put them down sooner, but me not being charge, I did not know what the railroad man's orders were.

Q. How much sooner could you have put it down?

A. Five or six hours.

Q. Could you now have put the iron down in a few minutes if you had it put down as the trestle was built?

A. If the rails had been commenced laying when the men commenced putting down the bumper, I suppose I could have finished by the time the bumper was down.

Q. Could you not have finished it, by using reasonable care—if they had put down the rails as they built the trestle—could you not have finished twenty-four hours sooner?

A. You mean finish putting down the iron? I hardly think so. It did not take them very long to put the iron down on the trestle. If the monkey switch had been put in with the track, it possibly would have taken twenty-four hours longer.

Q. Now, couldn't they have put down the iron on all of the track except the trestle before the trestle was finished, and then put down

the iron on the trestle, and in that way have finished the trestle so that cars could have gone on it twenty-four hours sooner?

A. No, sir; they did not take twenty-four hours in putting it on.

(Court takes recess until tomorrow morning at 9:30 o'clock.)

FRIDAY MORNING, *November* 13, 1903.

Morning Session.

Mr. JUSTICE: I wish to introduce some notices from the railroad company, on September 14, 1903, of the arrival at the depot here of Southern car 46826—coal.

487 September 19—N. & W. car No. 10514—coal.
September 9—N. & W. cars Nos. 1818, 12172—coal.
September 24—N. & W. car No. 11440—coal.
September 29—3 cars N. & W. No. 6047, No. 6104, No. 7565—coal.
October 2—N. & W. car No. 11032—coal.
September 10—S. F. & W. car No. 8708—wood.
September 10—A. C. L. car No. 20724—wood.
September 19—So. car No. 42543—wood.
September 25—A. C. L. car No. 9812—wood.
A. C. L. car No. 18782—wood.
September 14—A. C. L. car No. 21625—wood.
October 16—So. car No. 71426—wood.

(Last car—those being the cars upon which the original demurrage accrued—was left out.)

These cars embrace the cars upon which they charged demurrage while the track was being constructed.

(Cards filed, and marked Exhibit No. "7.")

One reason we introduced these cards is that the gentlemen insisted on yesterday that we should do so, and we take the advantage we can get from them. The court said Mr. Thompson should not speak of them unless we named them, and we have done so.

Mr. STRONG: We object to the introduction of these notices from the Southern Railway Company to the Greensboro Ice and Coal Company of the fourteen car-loads of coal, or of any other car-loads of coal that are not embraced in the order of the commission, to which exceptions were filed, and which are the only subject of this controversy.

Four cars embraced in the order of the commission:
October 18—N. & W. car No. 12565—coal.
October 18—So. car No. 70734—coal.
October 19—C. & O. car No. 47895—coal.
October 22—N & W. car No. 23280—coal.
We were only notified as to two cars:

488 October 19—So. car No. 70734.
N. & W. car No. 12565.

J. MILTON CUNNINGHAM, testifies as follows:

Direct examination by Mr. COOK:

Q. Mr. Cunningham, I believe you are the coal dealer in this city?
A. Yes, sir.
Q. How long have you been in that business?
A. About nine years.
Q. Will you please state whether or not, for a company doing the business of dealing in coal, the team track of the Southern Railway Company will be an accessible place for them to handle their cars?
A. I should not think so.
Q. Could you handle your business from the team tracks?

(Objection by defendant.)

Q. Could you do your business and handle it at the team tracks?
(Objection by defendant.)
A. No, sir.
Q. How does your business compare with that of the coal company?

(Objection by defendant.)

A. I do not understand your question.
Q. What is the volume of your business? Is it any where near that of the coal company's?
Q. Mr. Cunningham, have you ever had any conversation with railroad officials as to what empty cars are with to them per day?

(Objection by defendant. Objection sustained.)

Q. And on that basis, what was your trestle worth to them a day?

(Objection by defendant. Sustained.)

Q. What facilities have you for emptying your coal?

(Objection by defendant. Sustained.)

489 Q. Mr. Cunningham, did your coal trestle cost you one cent in the world?

(Objection by defendant. Sustained.)

Q. Mr. Cunningham, how long would it take to unload from sixteen to seventeen cars from the team tracks, specifying the number of teams and the number of men?

(Objection by defendant. Overruled.)

A. Why, three teams and three men can unload about a thirty ton car a day. It would take about seventeen days for seventeen cars.

Q. I will ask you, Mr. Cunningha-, if it is not the rule of the coal dealers everywhere to order all of their coal in order that they may store it for the winter?

(Objection by defendant. Sustained.)

Q. Mr. Cunningham, I will ask you, would it be possible for y doing your business as you do now, to unload from the team tr without incurring demur-age, under the rules that they now ha

(Objection by defendant. Sustained.)

Q. Mr. Cunningha-,can you do your business from the team tra and continue business?

(Objection by defendant. Sustained.)

Cross-examination by Mr. KING:

Q. Do you haul for the gas company?
A. Yes, sir.
Q. How long have you been hauling their coal?
A. About nine years.
Q. I will ask you if they are not large consumers of coal?
A. Yes, sir.
Q. Do they not unload from these team tracks of which you h been speaking?
A. They unload all of their flat-bottom cars from the team trac The dumpers—well, ninety-nine out of the hundred we put on chute.
Q Whose chute?
A. Our chute.
490 Q. How long have you had a chute?
A. About seven years.
Q. Have you been putting all of their open bottom cars on y chute during that period?
A. I said about 99 per cent of the open bottom cars.
Q. I will ask you if the hotels and churches and other people w buy their coal by the car-loads, do not unload from these team track
A. Yes sir.
Q. And you carry the coal cars of the gas company on your ch by reason of the fact that you get to haul it?
A. Yes, sir; and there are better facilities for unloading.
Q. That is an arrangement that you and the gas company have?
A. Yes, sir.
Q. That is your private chute?
A. Yes, sir.
Q. Is it not a fact that there is a chute on which anybody can u load and haul from in the yard of Matthews & Crawford?
A. There is a chute, but I don't think it could be used.
Q. Don't you know that people go there and haul from it?
A. I used it about four or five years ago, but I think that has be abandoned.
Q. You say it has been abandoned?
A. Yes, sir; I think they use it entirely now—Matthews & Cra ford, I mean.
Q. It is kept up?

A. Yes, sir.

Q. So that other people use it?

A. I do not think anybody else uses it.

Q. Does not anybody else that wants to use it?

A. I do not know. I have not unloaded any coal there in five years.

Q. Because you had a chute of your own?

A. Yes, sir.

Q. How long has the Greensboro Ice and Coal Company been in business here?

A. I think about seven or eight years, probably nine.

Q. Is it not a fact that they have been unloading their coal without a chute through all these years up to the present time?

A. Yes, sir.

491 Q. Did they not have to shovel their coal out?

A. Yes, sir.

Q. Is it not a fact that these team tracks there are filled up with cars from day to day for the accommodation of the public here with wood and other articles of like character?

A. Yes, sir.

Q. Is it not a fact that they are right to the left of the main street as you go down town, accessible from South Elm street on the west and Davie street on the east?

A. Yes, sir, they are accessible.

Q. Is it not a fact that these team tracks can be reached by coming out of the yard of the ice and coal company, right on this side of the main tracks of the railroad company and to the right coming north?

A. Yes, sir; they can be reached very easily from there.

Q. If a man had teams enough and men enough, of course, he could unload seventeen cars in a day?

A. Yes, sir.

Q. He is not bound to limit his business to three men and three teams?

A. No, sir.

Q. Do you not run more than three teams?

A. Yes, sir.

Q. How many cars of coal would you say that the gas company consumes in a year?

A. I should think 100 cars.

Q. Do they not consume more than an average of ten tons a day—twenty-four hours?

A. I think we get about two cars per week for them.

Q. Is it not a fact that there is abundant room for teams coming and going in and around about these team tracks?

A. There is on the team tracks, yes, sir.

Q. Now, these team tracks are between South Elm and Davie street, which are two of the most public and easily accessible streets in the city?

A. Yes, sir; that is a team track, but they have never offered to d
liver me coal on it.

Q. You have never wanted it delivered there, did you?

A. Yes, sir, I have asked them.

492 Q. Where did they put it?

A. On the spur track, or coal track.

Q. Where is it?

A. East of the freight depot, and runs to Davie street

Q. Is that not acces-ible?

A. Yes, sir.

Q. That lies between Davie and South Elm streets?

A. No, sir; east of Davie.

Q. Is not Davie street one of the most public streets and centrall
located?

A. Yes, sir.

Q. Is it not a fact that if you want to unload from the cars t
your wagon, that they will put them here on these team tracks b
tween South Elm and Davie streets?

A. Yes, sir; they will let you unload freight cars there.

Q. If you wanted to unload from the car to the ground, they hav
the car put on this spur track, of which you have spoken, and tha
is the reason for putting it there, is it not?

A. Yes, sir; I reckon it is.

Q. Do you know how many cars of coal the Greensboro Ice an
Coal Company uses during the year?

A. No, sir, I do not.

Q. Have you any idea—have you ever heard Mr. Thompson say

A. No, sir.

Examination by Chairman McNeill:

Q. You said if you wanted to unload from the car to the ground
they put it on the spur track; and if you wanted to unload from th
car to the wagon, they put it on some other tracks?

A. Yes, sir.

Q. Where is that track?

A. Most anywhere you wanted it, I have always understood. This
spur track is used exclusively for dumping cars on. All of the cars
that are dumped will have to be put on that track.

Mr. King: Is not the distance from this public team track to the
gas company's place of business more than double the distance from
that same team track to the place of business of the Greens-

493 boro Ice and Coal Company?

A. Yes, sir.

Redirect examination by Mr. Cook:

Q. Is that gas company on the railroad?

A. No, sir.

Q. Does it deal in coal?

A. No sir.
Q. Does it sell coal to anybody?
A. Not that I know of.
Q. Is there a dealer in this town, of coal and wood, that unloads from that track?
A. Yes, sir; we all unload from there when we have a car of coal that goes to one party.
Q. I mean exclusively.
A. No, sir.
Q. How many cars will that spur track admit at one time?
A. About three.
Q. If one dealer had quite a number of cars and it took him a day to unload each one, what would the rest of the city do?

(Objection by defendant. Sustained.)

Q. I will put the question different. Does that track furnish sufficient facilities for unloading the coal for Greensboro?

(Objection by defendant. Overruled.)

A. No, sir.
Q. I will ask you if that is not the only place that the Southern furnishes for dumping cars in Greensboro?
A. As far as I know, it is.
Q. Does the Southern Railway Company put the cars for unloading on the team tracks where you want them to?
A. They do as near as they can.
Q. How far is Matthews & Cranford's chute from the ice and coal company's plant?
A. Why, I do not know exactly. It is a little over two squares—about two squares and a half or three squares.
Q. I will ask you if that is not a private chute, for Matthews & Cranford, and if it is not always full?
A. I do not know who it belong- to now.
Q. Is it not mostly full of coal at all times?
A. Yes, sir.

494 Recross examination by Mr. KING:

Q. Mr. Cunningham, I will ask you if, as a matter of fact, the plant of the gas company is not right near to the main line of the Southern railway, in the eastern part of the town.
A. Yes, sir; within two squares of it.
Q. You do not mean to say that the distance from the main line of the Southern railway to the gas company is equal to two blocks of the town?
A. I should think so; yes, sir.
Q. Is there a single street between the plant of the gas company and the railroad?
A. Yes, sir.

Q. Where is it?
A. It runs from East Market street to the electric light plant.
Q. That is not a street, is it? Is that not laid down there fo
purpose of the electric car line?
A. In my opinion it is a street.
Q. Was it there until the electric car line came?
A. No, sir.
Q. Have they not got it filled up with tracks?
A. No, sir; I think not.
Q. It just runs to their door and stops?
A. Yes, sir.
Q. You were speaking about placing cars for you; you pay
demur-age, don't you?
A. Yes, sir.

Re-redirect examination by Mr. JUSTICE:

Q. Mr. Cunningham, did they ever charge you demurrage
cars that you requested to be placed on your chute and which
did not place there?
A. No, sir.

Re-recross examination by Mr. KING:

Q. They always placed them where you asked them to?
A. Yes, sir; as near as possible.
Q. They tried to accommodate you?
A. Yes, sir.

495 Mr. J. C. MORRIS again takes the stand, and testifies
follows:

Recross examination by Mr. STRONG:

Q. I understand you to say, Mr. Morris, that you built for
Greensboro Ice and Coal Company the chute on their private ya
A. The trestle you mean—yes, sir.
Q. Now, did the Southern Railway Company have to do a
grading from one of its main tracks up to this track of the Gree
boro Ice and Coal Company?
A. Not that I ever saw.
Q. They did not have to do any work at all?
A. All the work that I saw was on the rails and the mank
switch, or derailing switch.
Q. Mr. Morris, is it not necessary for the railroad company to i
spect such work as you constructed there, before putting the rails o
A. It is customary for them to inspect and receive all of t
trestles before they put on engines or cars.
Q. It is necessary to make an examination to see that the tra
is all right?

A. To see that it is sufficient to carry cars; yes, sir.

Q. What is the grade of that track, from the point where this track joins the main line of the Southern Railway Company up to the point that marks the beginning of the property of the Greensboro Ice and Coal Company?

A. That would be hard to say.

Q. I do not mean per cent. Is it a big grade or not?

A. We determine everything by per cent.

Q. Would a car stand on the Southern railway track just outside of the yard of the Greensboro Ice and Coal Company, without being chocked?

(Objection by plaintiff.)

A. I think the date upon which that question was asked determines how I should answer it. The track is in an entirely different position now from what it was when I was building the track. It is a reverse grade from what it was before.

Q. Well, at the time the trestle was completed?

A. At the time the trestle was completed, the cars would
496 run away from the main line.

Q. How long before this time?

A. I think the track was pulled over about 8 or 10 inches before the trestle was completed and the grade reversed or run the other way.

Q. When was the trestle completed?

A. I think about October the 1st. I could not tell positively.

Q. Now, in regard to unloading some stringers that are referred to. How were those stringers unloaded?

A. They were unloaded across the main line.

Q. Explain exactly what you mean by that.

A. There is a siding that goes around on the side of the C. F. & Y. V. and they put the car at that place—I do not know what siding they term it—and we had to take it from there across the main line. We had to watch the trains to get it out. I suppose we took it 15 feet.

Q. I understand you to say that you did not unload it on the 150 feet of track near the ice company's plant that we have been speaking of?

A. They refused to put it on there.

Q. For what reason?

A. They said that the switch was spiked down. I knew that that was proper railroading. The car I am referring to now is the car of stringers.

Q. I wish you would explain what the general line of grading is of this track that runs into the Greensboro Ice and Coal Company's yard from the main line of the Southern railway. What is the outline of the track?

A. You mean the location?

Q. Yes; starting where it leaves the Southern main line.

A. It runs about the same per cent. about either 36 or 48 feet
to the trestle, and there the level is, and then the incline, I suppos
is about—well, it is near 3 per cent. or 3 feet in the hundre

Q. The decline coming which way?

A. Into the main line, as it is now. From about 36 feet on t
trestle.

Q. Those rails were laid by the Southern Railway Company,
understood you to say?

A. Yes, sir; the crew were strangers to me, but I assumed the
were the railroad men—the Southern railway men.

497 Q. And, as a matter of caution, it was necessary for t
Southern Railway Company to examine the trestle after
was built.

A. Yes, sir; I never built a trestle unless the yard master, th
supervisor, or the superintendent, or some one or more inspecto
saw it before and inspected same. I think Mr. Wells did it in th
case.

Q. I will ask you if these rails were not laid on the track and the
spiked down?

A. After we left it, you mean?

Q. The rails that run from the main line of the Southern railwa
back to the yard of the Greensboro Ice and Coal Company?

A. I do not know, sir; I was only there once or twice. The
might have done some work on the derailing switch, and then—
they might have left some spokes off but I think they were spikin
the rails up pretty fast.

Q. Don't you think Mr. Morris, that during the construction o
this chute on the premises of the Greensboro Ice and Coal Compan
that that track that we are speaking of running from the main lin
back into there, was in a generally disturbed condition and not
proper place upon which to place cars?

A. Well, I do not know as I could answer that. When I made
request for the car, I thought this car was consigned to me, I pai
the freight on one that I bought of the W. W. Mills Lumber Com
pany, and I made the request through the yard conductor, no
the yard master, and he told me that the switch had been spike
down and that cars could not go in there; and, of course, that is goo
railroading rules, that when the track is open and no bumpers, it i
supposed that the switch must be spiked down. I made no further
request because I considered it good judgment not to put a car in
there and the switch in that condition.

Q. When the switch is spiked in this way, does that not show
that the railroad company——

(Objection by the plaintiff. Sustained.)

Q. From your own knowledge, what significance does it have,
when a switch is spiked down in this way you have testified?

498 A. That means there is trouble on the track and that the
track is not in good condition to put a car in there.

Q. Do you know whether or not the W. W. Mills Lumber Company had a place for the delivery of their lumber out somewhere beyond the cemetery, that you heard testified about here?

A. Yes, sir; they had been delivering lumber to the White Oak mills.

Q. Do you know whether or not they delivered cars daily to the White Oak mills, filled with lumber?

A. I could not say. It is supposed that they sell a good deal of lumber out there.

Q. Don't you know that they put in a number of tracks out there and that they had to have ties for those tracks?

(Objection by plaintiff.)

A. No sir, I do not know anything about that.

Re-redirect examination by Mr. JUSTICE:

Q. Mr. Strong asked you if spikes were driven at the switch, if that did not indicate that the track was not to be used. I will ask you if the spikes are drawn out of the switch, if that does not indicate that the switch is ready to be used?

A. Yes, sir.

Q. I will ask you, if, after these spikes were driven in this switch, this track was not used by the railroad company before the trestle was completed?

A. I think that is correct.

Q. I will ask you if that piece of track, that they say is outside of the yard of the Greensboro Ice and Coal Company, the 150 feet left and not torn up, is not now used as a public team track and if there are not cars standing on it today?

A. I do not know.

Q. Do you know whether or not it has been used as a public team track since the trestle was built?

A. I have not seen but four cars on the trestle. I have been over there very little and I do not know.

Q. You say that the railroad company receives the trestle after it is completed? Do they receive it before the iron is put down?

499 A. Yes, sir; it is generally understood that it is not tendered at all until it has been inspected.

Q. And when they are putting the iron down, that is after the inspection and acceptance of the trestle.

A. It is supposed to be; yes, sir.

Re-recross-examination by Mr. STRONG:

Q. You say that you have seen cars put upon this 150 feet of track during the construction of the coal chute. Have you ever known a car to stand on that track over night?

A. I could not say about that.

Q. Have you ever seen many cars standing there during the construction of the trestle?

A. I am pretty sure I have seen two or three.

Q. Can you tell me whose cars they were and for what purpose the contents were to be used?

A. There are two very plain to me. I remember that Mr. Thompson telephoned for me to come down, and he asked me if that was my car. I went out to see, and I think when I got there they were unloading it for Mr. Townsend, and the other car was there to be loaded.

Q. Who is Mr. Townsend?

A. He is an agricultural implement dealer on South Elm street. The other car was being loaded with the old city tank from across the railroad.

Q. Were they going to ship it off?

A. Yes, sir; I suppose so. I understood it was to go to Mt. Airy.

Q. Do you know whether or not it was in the way where it was?

A. I do not know.

Q. They were the only two cars. Were they unloaded promptly and taken away?

A. One was being loaded and the other unloaded. Both were not on there at one time. Both were gone when I came back again.

Examination by Chairman McNeill:

Q. Do I understand you to say, that before this trestle was elevated that the grade was down from the main track out on this side track?

A. Yes, sir.

500 Q. Rather than up?

A. Yes, sir; it was running in.

Q. You mean before it was disturbed?

A. Yes, sir.

Q. It was down rather than up?

A. Yes, sir.

Mr. Strong: How long after starting the trestle, this was disturbed?

A. At the time the trestle was started, the grade was down; when completed the grade was up.

Q. How long after the starting of the trestle was the change made?

A. You mean the grade reversed?

Q. Yes.

A. That is a hard question for me to answer. I am away from the office so much. I would suppose the trestle was about five or six weeks under construction, and I think about perhaps three weeks after we started, Mr. Thompson did this grading.

Q. He had the track raised?

A. Yes, sir.

Q. Didn't they immediately upon the starting of the track upon this trestle, raise the rails upon that track and put them on cross bars,

so you could see what grade you would have to have, while you were constructing the trestle?

A. No, sir; not immediately.

Q. Did they not raise the rails before they started the track—before the road-bed was raised?

A. They made a temporary raising of the rails, as in all such cases.

Q. Was that not immediately or very soon after you started?

A. No, sir.

Q. How long then?

A. About two weeks. You must remember it takes a week or ten days to frame a trestle of that kind before you could do anything.

Q. It took you six weeks to build the trestle?

A. Five or six, I do not remember which.

Q. Didn't you raise the end of those rails before you started to work on the trestle?

A. No, sir.

(Plaintiff rests.)

Mr. R. O. WHITAKER, witness for defendant, after being duly sworn, testifies as follows:

501 Direct examination by Mr. STRONG.

Q. Your name is R. O. Whitaker?

A. Yes, sir.

Q. Your occupation is what?

A. Yard master.

Q. Yard master of what road?

A. Southern Railway Company, Greensboro.

Q. As yard master, what are your duties?

A. Well, in connection with this particular matter, I should think it would be sufficient to say that I have charge of switching all the cars, as ordered by the agent. I have charge of the placing of cars in Greensboro in accordance with the agent's instructions.

Q. They are your duties in connection with this case. What are your general duties?

A. I exercise general supervision over all of the switching, making up and receiving trains, and the organization of yard and road crews.

Q. What do you mean by the organization of the yard crew?

A. Keep the crews organized and a sufficient force on hand to do the work.

Q. You have heard this testimony as to these cars in controversy—these cars for the Greensboro Ice and Coal Company on which demurrage accrued—can you state as to whether or not these cars were placed accessible for unloading, and how soon?

A. You have reference to the cars that were received just before——

Q. All of the cars received for the Greensboro Coal and Ice Company during the construction of the chute.

A. There was a portion of them not placed during the construction of the chute—all were placed that were asked to be placed.

Q. Were there any asked to be placed?

A. No, sir.

Q. Do you know the usual method employed by the Southern Railway Company here, as to the placing of cars for unloading, for the consignee?

A. Yes, sir.

Q. Will you state what it is?

A. Well, the usual method is that all cars consigned to parties who have no private sidings are placed immediately upon an order
502 from the agent, on the city delivery tracks, and those for private siding, on such siding.

Q. Can you state whether, of your own knowledge, the Greensboro Ice and Coal Company ever ordered any cars placed upon this 150 feet of track running from the main line to the line of the property of the Greensboro Ice and Coal Company?

A. No, sir; they did not to my knowledge.

Q. State what your knowledge of any such request would be, that is as to the scope of your business?

A. If such request had been made, I would have been about the first man to have known it and executed it.

Q. Did you ever have any conversation with Mr. Thompson, of the Greensboro Ice and Coal Company, in regard to the placing of these cars; if so, state what—during the period of the construction of this track and trestle?

A. I can not recall any special conversation. He referred incidentally to the cars to me several times, but I can not recall anything of any note that was ever mentioned.

Q. Did you make any suggestion to Mr. Thompson as to where these cars could be placed that would be most acces-ible to him?

A. No, sir; I did not myself.

Q. Who did?

A. The yard conductor, Jackson, who has charge of the track outside of the yard. He made some proposition to him with reference to the release of the cars, and offered to render him any assistance in his power.

(Objection by plaintiff.)

Q. Yard Master Jackson?

A. No, sir; yard conductor.

Q. Can you, of your own knowledge, state whether or not the four car-loads of coal in question were placed accessible upon the public team tracks in Greensboro by the Southern railway for the Greensboro Ice and Coal Company?

A. I do not want to get this matter confused. Which four cars of coal have you reference to?

Q. The first four car-loads that arrived after the Southern Railway Company declined to switch upon the private track.

A. Yes, sir; they were placed upon the most accessible and desirable part of the yard. There were two on the spur on Davie street in a position for dumping.

503 Q. Now, as to the fourteen car-loads, that were designated as the original fourteen, were they placed accessible?

A. I cannot say that they were, of my own personal knowledge, because there was no request ever made that they be placed, and we were all laboring under the impression that they would unload them immediately upon the completion of the trestle, and that he did not want them previous to that time.

Q. What are the conditions or circumstances upon which you placed cars for unloading? Do you do it of your own motion?

A. Mr. Coffin has what he calls a credit list. We placed all cars, as I have just stated, on the general delivery tracks, team tracks is what we call them, unless the parties had private siding.

Q. I am not speaking about private sidings?

A. Well, we placed all cars on the general delivery tracks.

Q. Were you in a position to place these fourteen cars of coal upon the request of the Greensboro Ice and Coal Company, accessible upon the team tracks for them?

A. Yes, sir.

Q. Do you know, Mr. Whitaker, anything about the Matthews & Crawford chute, that was testified about this morning?

A. Yes, sir.

Q. Do you know who owns that chute?

A. The Southern Railway Company, so far as I know.

Q. Do you know the condition of the chute?

A. Yes, sir; it is a pretty good and roomy chute.

Q. Do you know whether or not these car-loads of coal could be handled on that during the construction of this trestle?

A. They could have been handled, if they had been accepted as they came in; but, of course not, if they were allowed to accumulate.

Q. I understand you to say that they came in at different times, and could have been unloaded as they came in.

A. Yes, sir.

Q. You say this chute is owned by the Southern Railway Company. State whether or not, if you know, that other parties than Matthews could have used this chute?

A. Yes, sir; it could have been used by other parties to some extent.

504 Q. This car-load in question—could you have placed them on that chute at that time?

A. Yes, sir.

Q. State whether or not you would have put these cars upon the chute, had you been requested by the Greensboro Ice and Coal Company to do so?

A. Yes, sir.

(Objection by plaintiff.)

Q. Were you in a position to put the coal over there?

A. Yes, sir; one car at a time, as the cars came in.

Q. Do you remember writing a letter to Mr. M. W. Thompson, secretary of the Greensboro Ice and Coal Company, dated November 7th?

A. Yes, sir; I remember dictating a letter, but I did not see it after it was dictated and did not sign it, I suppose. I can tell you if you will let me see the letter?

Q. State whether or not you were, by virtue of your position with the Southern Railway Company, authorized to make any such statement.

A. No, sir; that letter was simply a statement of my personal views, and had I had an opportunity to see the letter and sign it, as is my usual custom, I would never have put the title of yard master at the bottom of it. It was simply an expression of my personal opinion, without regard to the position with the railroad company.

Q. Did you ever have any conversation with respect to this letter with any of the attorneys for the Greensboro Ice and Coal Company?

A. Yes, sir.

Q. Did you know anything about the spiking of this switch?

A. Yes, sir; I knew that it was spiked.

Q. You knew it was spiked?

A. Yes, sir.

Q. Do you know how long after they began the construction of this trestle that it was spiked?

A. I do not exactly understand you.

Q. When was the track first disturbed?

A. It was spiked immediately upon the beginning of the erection of the trestle, and to the best of my knowledge and belief, remained so spiked until it was completed?

Q. When did they first start to tear up the track, do you know?

A. I can not recall the date.

505 Q. Was it before or after the commencement of the erection of the trestle?

A. I do not exactly remember, Mr. Strong.

Q. Do you know as to whether or not the rails upon the 150 feet of track belonging to the Southern Railway Company were raised so as to give them the grade of the track upon the trestle?

A. Yes, sir; the ends of the rails up to the trestle where the work was to be done were elevated and cross ties laid under the rails, which gave the grade a decided tendency to the main line.

Q. Was it in any condition to be used as a place upon which to put cars for unloading, during the time of the construction of that trestle?

A. No, sir.

Q. Can you state for what reason?

A. It was considered an unsafe place to put cars by reason of the grade and the nearness to the main line and the short space.

Q. You have heard Mr. Morris testify that he saw two cars there—can you state why they were put there?

A. No, sir; I have no recollection of their being there.

Q. In order to place two cars there, what is necessary to be done to the spikes?

A. You would have to pull the spike, and get a spike-bar and throw the switch.

Q. That could be done?

A. Yes, sir.

Q. There is a track of the Southern Railway Company that runs around on the south side of the Greensboro Coal and Ice Company's plant—do you know whether or not there was an effort made by the Southern Railway Company to place those cars there?

A. Conductor Jackson, one of my conductors, informed me that—

Q. Do you know of your own knowledge?

A. I only know what he told me.

Cross-examination by Mr. Cook.

Q. As a private citizen, I do not ask you as yard master of the Southern Railway Company, but I ask you as a private citizen, having experience on that yard, if it is not rather an inaccessible place for a company receiving as many cars as the Greensboro
506 Ice and Coal Company?

A. I should think they would have no trouble in keeping the accumulation down if they got them off properly after the arrival.

Q. I will ask you if you did not state to me that fact last night?

A. No, sir; I have no recollection of making any such statement.

Q. I will ask you if you did not state to me that they could not do it, getting as many cars as they do, without incurring demurrage?

A. No, sir.

Q. I will ask you if you have not said that the trestle is of as much benefit to the railroad company as it is to the Greensboro Ice and Coal Company, in handing them back their cars?

(Objection by defendant.)

Q. I do not ask this as yard master, but I will ask you if that trestle is not a mutual benefit to the railroad company and the Greensboro Ice and Coal Company?

A. From a casual glance of the situation, it would seem that it is, but take the past history of the plant and taking into consideration the fact that they have always handled their business previously promptly and never incurred any demurrage, I think that history would set aside the fact.

Q. I will ask you, and put you on your guard, if you did not tell me that the trestle was as much benefit to the railroad company as it was to the ice and coal company? Didn't you tell me that last night standing in the passenger station?

A. I have answered your question twice and told you I did not make that statement.

Q. Do you remember when that spur track was spiked down?

A. Yes, sir.

Q. Have you seen a single car on there since it was spiked down?

A. No, sir; I don't think I have.

Q. Will you say there was not a car there?

A. No, sir.

Q. You do not know of your own knowledge whether there was one or not?

A. I do not know.

Q. There might have been cars there?

A. Yes, sir.

507 Q. Will you undertake to say how long after that trestle was begun that that track was spiked down?

A. My impression is that it was during the entire time. Of course, I did not have an opportunity to stay there much and watch the spikes.

Q. Do you know, of your own knowledge, it was spiked down during the entire time?

A. Only as I have just stated. The understanding of the yard was that it was spiked down and unsafe for use.

(Objection by defendant.)

Q. If there were cars placed on that track afterwards and it were operated by the railroad company, it would raise the presumption that it was safe, would it not?

A. You mean during the interval that the trestle was under construction?

Q. Yes sir.

A. I suppose if a car were placed there in day light as a matter of special accommodation to some citizens and one of the yard conductors would overlook the work and see that the chocks and brakes held it and there was no risk, it being taken out before night, I presume if such were done, those precautions were observed.

Q. Captain, I will ask you if they are not using that track as a team track right now?

A. Not in the general sense of the word. We have occasionally placed a car there for the Guilford roller mills and as a matter of convenience have placed Mr. Gorrell's beer there, but he unloads it in an hour or so.

Q. I will ask you if you have not placed a car there in the last forty-eight hours for the Greensboro Ice and Coal Company?

A. Not of my knowledge.

Q. You do not keep up with that track?

A. Yes, sir; I keep up in a general way with all of the tracks.

Q. I will ask you if they are not unloading a car from there right now.

A. I could not testify to what is done there this minute.

Q. Well, it is your business to look after everything down there, is it not?

A. Yes, sir.

Q. And if a car is unloaded there, you ought to know it ought you not?

A. Not necessarily. My organization is supposed to be
508 sufficiently reliable not to make it necessary for me to look after every detail, otherwise it would not stand.

Redirect examination by Mr. STRONG:

Q. Mr. Whitaker, do you know how many car-loads of coal the gas company handles proportionately to the amount handled by the Greensboro Ice and Coal Company?

A. No, sir; I could not answer that question definitely, but I think it would be very nearly the same—if anything the Greensboro Ice and Coal Company handles a little more. That is just a surmise.

Q. Do you know how far it is from this side track of the Southern Railway Company on the south side of the property of the Greensboro Ice and Coal Company is from the point where their coal bins now are?

A. Which coal bins?

Q. The Greensboro Coal and Ice Company—where they dump the coal.

A. From there to what point?

Q. From the track on the south side of that property.

A. To the main line you mean?

Q. No, to where they dump the coal.

A. I should judge it is about 150 or 200 feet, but I have never measured it. I have seen it frequently.

Q. You have seen it?

A. Yes, sir; frequently.

Q. Can you state whether or not car-loads of coal could be unloaded from that track upon the south side of the Greensboro Ice and Coal Company property into the yard of the Greensboro Ice and Coal Company from the cars?

A. Yes, sir; I suppose it could have been done. Most anything can be done, but it would have been done with great delay and inconvenience.

Q. To whom?

A. The ice plant.

Q. How far is this track that I am speaking of on the south side of this plant—how far is it from the fence of the Greensboro Ice and Coal Company?

A. I think it is thirty yards, probably 40. I cannot be accurate about it.

509 Q. Could you ascertain that and let us know later?

A. Yes, sir. Mr. Jackson knows and he will tell you.

Q. You say then you do not know?

A. No, not exactly.

Examination by Chairman McNEILL:

Q. Where did the Greensboro Ice and Coal Company—where di you place their cars for the delivery of their coal prior to the erectio of this trestle?

A. Now that brings up the old question, whether the original fou teen—before the embargo?

Q. I am speaking about before the trestle was elevated.

A. I do not think there was any delivery made. They were place on the double track and on Tate's track right near their plant, wait ing for an opportunity to deliver them. There was never any reques or suggestion made to me to deliver them.

Q. I am talking about the cars before the fourteen arrived and be fore there was any mention of the trestle—during all the years tha the Greensboro Ice and Coal Company was in business—where did you put their cars?

A. On this same track where they have now got their trestle.

Q. About where the trestle is?

A. Yes, sir.

Q. Were the bins there?

A. No, sir; they shoveled it out.

Mr. F. W. JACKSON, a witness for defendant, being duly sworn, testifies as follows:

Direct examination by Mr. KING:

Q. Are you acquainted with the relative position of these different tracks and the plant of the Greensboro Ice and Coal Company?

A. Yes, sir.

Q. How long have you know- them?

A. Well, sir, I can not recollect exactly the time, but it has been several years.

Q. Are you now in the service of the Southern Railway Company, and have you been for some years past?

A. Yes, sir.

Q. Do you remember about the time they commenced the raising of this track, and the putting in of this chute?

A. Yes, sir.

Q. Do you know, of your own knowledge, that the switch
510 was spiked?

A. Yes, sir.

Q. Now, with reference to the time that they commenced to work on this chute or to raise this track, when was this switch spiked?

A. Well, sir, when they started to take that track up, the section master spiked it.

Q. How long after the work started there was it before they — the track up or commenced to take the track up?

A. I do not know exactly. I think it was about the time they were framing the bunches.

Q. Was it necessary to take the track up leading into the yard of the coal company?

A. I do not know exactly how much it was moved. I have never noticed. I know the trestle sets south of where the old track was.

Q. Is it not a fact that the track leading from the main line up to the yard of the coal company was moved in the re-arrangement about a foot or so south?

A. That track was moved north?

Q. Yes; slipped or slided over?

A. I do not know, sir. I know that they took the track up and put two rails under it, and he made that fill for the track.

Q. It was necessary, then, to make a fill rising up to the trestle and where it goes into the yard of the coal company of some three or four feet?

A. Yes, sir; I guess it is something like that.

Q. So, then you have the rise of three or four feet between where it leaves the main line up to the fence of the ice company?

(Objection by plaintiff.)

A. Yes, sir.

Q. During the period of this construction there, was that space in there of 100 or 150 feet between the main line and the grounds of this ice company used for any purpose?

A. Yes, sir; we used it some.

Q. To what extent?

A. We used it to deliver cars there for the mill.

Q. But during this construction.

A. No, sir; not then.

511 Q. Well, then, was it used during the time the work was going on?

A. No sir.

Q. Antecedent to that it was used some for this mill?

A. Yes, sir; they used it to get wood, etc., there.

Q. Have you knowledge of the track that goes around just on the south side of the grounds of this ice company?

A. Yes, sir.

Q. How near to the fence of this ice company do the cars stand when on that track?

A. The track is just far north enough from the fence to clear around. Some time ago a forty-foot car struck the fence and tore it down.

Q. It is a curve there?

A. Yes, sir.

Q. So the curve is so short that a forty-foot car tore down the fence?

A. Yes, sir; the section master changed the track a little and it is all right now.

Q. Can you shovel coal from car standing on that side on the track into the yard of the Greensboro Ice and Coal Company?

A. Yes sir.

Q. Do you know whether the railroad company through you, or other representative, tendered to this ice and coal company to place its cars there on that track for unloading during the period of the construction of this trestle?

A. It holds four cars there, and we had four there clear up to the end of that fence all of the time. I know there was a box car that stood there for at least ten days, and they never did unload it. Those slabs stood there and not unloaded and they were in the way going into the factory, so we set them off on the Eagle Foundry siding. They were not unloaded then.

Q. Would it have required any more effort or time to have unloaded these cars with slabs and coal over the fence into the yard, than simply throwing them out of the cars in any ordinary place?

A. No, sir; it does not seem to me it would.

Q. Is it not a fact, Mr. Jackson, that you tendered to this ice and coal company during the period that these cars stood on the south side of the fence, to unload them into their yard or for them to do it?

A. Yes, sir; that is what they were put there for.

512 Q. Did you call the attention of Mr. Thompson, or any other party, that those cars were there?

A. Yes, sir, we asked Mr. Thompson why he did not unload them and he said he did not want them unloaded there.

Q. How far would you say is the trestle bench as they now have it from that fence over which you could have unloaded the coal?

A. About 200 feet.

Q. That fence is around their wood and coal yard?

A. Yes, sir.

Q. Do you know at what other points these cars stood to be unloaded during the period they were on the yard?

A. We had a lot for them on the team track.

Q. The *gre*ular team track?

A. Yes, sir.

Q. Over by Davie street?

A. Yes, sir.

Q. Do you know whether any of them were placed on the team tracks between South Elm and Davie streets?

A. Yes, sir; I know of a car of wood.

Q. Just state what you did by way of importuning Mr. Thompson to unload this coal and wood, during the construction of the trestle and some time thereafter?

A. He said he could not unload them until they got the chute done. Of course, we had to store the cars away the best we could until they got the chute there.

Q. He did decline to unload them at any point except on his chute?

A. Yes, sir.

Q. Did Mr. Thompson ever ask you to place any cars on that

track between the switch and his fence, leading into his chute during the construction of that chute?

A. No, sir; that little piece of track was in such shape there before the trestle was finished that you could not use it.

Q. Did he ever designate any point where he wanted you to place these cars during the period of construction?

A. No, sir.

Q. What did Mr. Thompson say when he was approached about taking care of the cars or unloading them, what was his reply
513 —well, in other words, what did Mr. Thompson say to you when you approached him about unloading these cars, during the period of the construction there?

A. He said that he wanted them on his chute and he would not unload them until he got them there.

Q. Will you please state to this honorable body whether or not it is dangerous to stop cars on that track between the switch and the fence of this coal company, as it is now constructed?

(Objection by defendant. Overruled.)

A. Well, it was on a grade, and, of course, if a car got loose it would run out on the main line.

Q. In stopping cars there, what do you do to retain them there?

A. We put the brakes on good and chock them. But there was a jack switch there at the end of the trestle, put there about a month ago, but that has been removed now, so as to allow cars to come this *side* of that track.

Q. Then if cars would get loose up there they would run down on the main line?

A. Yes, sir; they would before, but here not very long ago somebody moved the jack switch right where he had the coal yard. Before that if we had a car to get loose there it would derail it.

Q. Is that jack switch on his yard?

A. Not now it is not.

Q. It is placed where?

A. Down this side.

Q. How far from the fence?

A. Probably 40 feet.

Q. Is not that place much frequented and passed by all kinds of people?

A. Oh, yes; people are passing there all the time—going down the railroad.

Q. When was this jack or derailing switch put in?

A. It was put in when the track was finished just inside of the fence, right about the corner of the trestle, but since that was built, not very long ago, it was moved down towards the main line.

Q. How long would you say it was?

A. Within the last month or something like that.

511 Cross-examination by Mr. JUSTICE:

Q. Where, Mr. Jackson, is that jack switch with respect to the railroad company's right of way? Is it outside of the right of way?

A. I do not know, sir.

Q. You say that there are forty feet between the fence of the ice and coal company and the switch?

A. Yes, sir; I judge so.

Q. What is a jack switch?

A. It is a derailing switch.

Q. What is the purpose of it?

A. It derails cars when they get loose.

Q. If a car would get loose there, what would be the effect?

A. It would run off.

Q. And not in the main line?

A. No, sir.

Q. What is its construction?

A. (Witness explains the construction of a derailing switch.)

Q. That is a simple thing to make?

A. I don't know about that.

Q. Railroad men, who are up in that business, can easily make one?

A. I don't know; I do not think they could.

Q. A man who knows how can do it easily? It is not a very difficult job is it?

A. No, sir; I guess not.

Q. How long did it take to put that in?

A. I do not know.

Q. About how long?

A. I suppose a man could put one in in thirty or forty minutes, if he has gotten everything right there.

Q. Where did they get the material—from the railroad shops?

A. I do not know; I reckon so.

Q. That is where they usually get the material?

A. Yes, sir.

Q. So if the railroad company had sent down the proper appliance from the shop, they could have put that switch in in a very few minutes?

A. Yes, sir.

Q. Mr. Jackson, if that switch is between the fence and the main line, and forty feet from the main line, of course there is room for a car to stand between the fence and the main line?

A. Yes, sir.

515 Q. A car is about thirty feet long, an ordinary car, isn't it?

A. About 34 feet.

Q. Your estimation as to the distance of how far it is from the fence to the main line—it is merely an estimate? You have not measured it.

A. No, sir.

Q. You said that a spike was driven down on the switch next
o the railroad, soon after beginning to work on the trestle. How
ng after they began to work on the trestle?
A. Just as soon as they took up the track down there.
Q. How long after they began work on the track at all?
A. I think Mr. Thompson did the work on the track.
Q. How long after they began work on the track was it until the
witch was spiked down?
A. I think when they tore up the track, the section master spiked
he switch down.
Q. Was that the first work he did?
A. I think it was.
Q. I will ask you if on the outside of Mr. Thompson's fence, if
hey did not move this 150 feet of track around just a few inches on
evel ground?
A. Yes, sir; they moved it several feet.
Q. They did not unspike the rails from the cross-ties to do that,
id they?
A. They merely prized the whole track around?
—. ——.
A. They raised the whole track up and it stood up out of place
ntil they got the other part graded up.
Q. How long was it—this distance from the main line of the
oad down to a point that leads to the Greensboro Ice and Coal Com-
pany's plant, that they——
—. ——.
Q. How far was it from those rails out to the main line?
A. I do not know.
Q. Was it about 150 feet?
A. I do not know; I think not.
Q. How far?
A. I do not know.
Q. Do you remember that old water tank?
A. Yes, sir.
Q. Do you know when it was loaded on a car?
A. I think it was loaded before work was begun—before the track
was ever bothered.
516 Q. Are you certain about that?
A. I am not certain, but I think it was about that time I
hink it was loaded before the track was torn up. I may be mistaken
bout it.
Q. If it was loaded after the work on the track began, it must have
been loaded on a car that stood on this track between these rails and
the main line?
A. Yes, sir.
Q. There was room between the rails that raised the track and the
main line for a car to stand?
A. We might — been able to put one there.
Q. Well, could you not have put several cars there?

A. No, sir; I think not.

Q. Now, if you are not certain about its being 150 feet, do you mean to swear that you could not put several cars there?

A. Yes, sir.

Q. Could you put three cars in there?

A. No, sir.

Q. And yet you do not know whether it was 150 feet?

A. No, sir; I do not.

Q. You say that Mr. Thompson did not give you any orders about delivering his cars on any particular siding?

A. No, sir.

Q. He did not tell you that he wanted his cars placed on his track that we were saying the water tank was loaded?

A. No, sir; he did not tell me so.

—. Did not raise the track off of the ground, until they put the trestle and got ready to put the track on the elevated grade?

A. It remained a good while.

Q. About how long?

A. I do not remember. I think they got the trestle nearly through before the track was pulled around.

Q. They did not put the track up on this fill until just about the time they had the trestle completed?

A. No, sir.

Q. And prior to the time that they put in the fill, they left it lying on the ground, on the same level where it had been?

A. A. No, sir; when they tore it up, the track was jacked up—it was raised and two rails were put across under it. The track
517 was in a little cut like, and two rails were put under it to hold it up, and there it remained, but I do not know how long.

Q. What were those rails resting on?

A. They were put cross-ways on the ground.

Q. Did those rails run at right angles with the cross-ties?

A. No sir.

Q. Parallel with the cross ties? They ran just as ties run?

A. Yes sir.

Q. There were two of them. How close together were they?

A. I guess ten or fifteen feet.

Q. What was between those rails. You say they ran parallel with the cross ties and you say they were ten or fifteen feet apart?

A. The rails rested on a little bank on each side.

Q. What was between those rails to hold the track up?

A. The track was in a kind of little cut and the rails were put across there.

(Witness explains.)

Q. From the rail which was nearest to the main line—from there out the track rested on the ground?

A. Yes sir.

Q. What have you got to do with the railroad?

A. I am yard conductor.
Q. Whom do you work under?
A. Mr. Whitaker.
Q. What position does he hold?
A. Yard master.
Q. Whom does he work under?
A. Superintendent and train master.
Q. Who is train master?
A. Mr. Lake.
Q. What position does Mr. Alley hold?
A. He is car service man.
Q. Is he over Mr. Whitaker?
A. No, sir; I think not.
Q. Who do you take your orders from?
A. Mr. Whitaker.
Q. Then, Mr. Thompson, if he wanted you to do anything, he would go to your boss, would he not?

(Objection by defendant.)

518 A. Sometimes he comes to me.

Q. Do you know Mr. Hicks, engineer of the Greensboro Ice and Coal Company?

A. I do not know him personally; I may have seen him. I may know him when I see him.

Q. Did any representative of the ice and coal company come to you, or to any of the other officials there in your presence, numbers of times, and request that these cars be placed down there on this siding where we say the tank was loaded?

A. No, sir.

Q. Now you speak of a track next to the fence, so close that when cars are placed there—well, you say a forty foot car tore down part of the fence. What is on the other side of the fence, inside of the ice and coal company's lot?

A. He unloads wood there.

Q. What was there at the time the trestle was being built?

A. I think there was a little wood in there—a car load or so.

Q. A little?

A. Yes, sir.

Q. How much do you think is a little?

A. A car load or so.

Q. I will ask you Mr. Jackson, if the space next to the fence all along the fence, was not piled up, almost level, with the fence, standing away out, and would that not have had to have been removed at a great expense, to have unloaded cars there?

A. No, sir; he had a pile of wood about his saw—a pretty good pile, and that is all that I saw.

Q. Are you familiar with the rules of the corporation commission?

A. I do not know that I am, sir.

Q. You are not?

A. Not in all respects.

Q. Don't you think you had better inform yourself about what the duty of the railroad is if you are going to act as conductor on the yard?

A. In what respect do you mean?

Q. As to how and when you shall place cars, when and what notice you shall give after they are placed.

A. I do not have that to do. The only thing that I do is to place the car, put down the number and initial of the car, and where I put it and the time. We have what is called a track book and it is kept for that. When I move that car, I put the same car
519 number and initial down, and the time I released it.

Q. You do not know, then, what obligations the railroad company is under to the consignee of things by reason of the rules which the railroad commission has formulated?

A. No, sir; I do not know exactly. I know they have a certain limited time, but I do not know exactly how much.

Q. You do not know how much?

A. Not exactly.

Q. And you do not know what notice is required?

A. No, sir.

Q. You do not know the kind of notice?

A. No, sir; I do not have that to look after.

Q. So far as you are concerned, you have not tried to live up to the rules of the commission, because you do not know them?

(Objection by defendant.)

A. Mr. Alley comes to me and keeps all of the work that I do. He attends to all of that.

Q. You told us while ago that these fourteen cars, upon which the demurrage is charged, were placed during the period that the trestle was under construction. Did you not tell Mr. King that some were placed on Davie street for delivery?

A. Yes, sir.

Q. You have also told us that when you do place cars, you make a record of the number and initial of the car, and the time and place, don't you?

A. I do.

Q. Have you any record of having placed these fourteen cars during this time?

A. I have it at my office on my book—when unloaded and released.

Q. Do they say after the trestle was built?

A. Yes, sir.

Q. Have you any record on your book of having placed them any where before the trestle was built?

A. Yes, sir; they were not unloaded until after that trestle was built.

Q. Have you any record that they were placed anywhere until after that trestle was built?

A. Yes, sir; I have. Some of them were placed around that fence.

Q. Where is that record?

A. Down at the yard office.

520 Q. Is that entry made in the order of the time that it should have been made? Is that an orderly record in point of date and properly made on your entry at the time?

A. Yes, sir; I think it is.

Q. Will you get it for me?

A. I think so.

Q. I wish you would and bring it in after dinner.

A. All right, sir.

Q. What track do you say they were placed on?

A. Some of them were placed on the Greensboro Lumber Company track.

Q. Is that one that tore down the fence?

A. Yes, sir.

Q. Have you got a record of those placed on the Davie street team track?

A. No, sir; I haven't got that.

Q. Why haven't you?

A. I did not place those.

Q. Who did?

A. I guess a man on the mill yard.

Q. How do you know they were placed?

A. I saw them there.

Q. But do you know that a record was kept and that they were placed there for the purpose of being unloaded?

A. Yes, sir; I do.

Q. Did you ever see that record?

A. No, sir.

Q. Then why did you know they were accessible?

A. I knew they were there and knew whose cars they were.

Q. Were these some of these fourteen cars?

A. Yes, sir; they were.

Q. Some of the cars were placed before the trestle was completed. We have the number, and I want you to get them. Will you do it?

A. Yes, sir.

Q. Did you have any order from the Greensboro Ice and Coal Company to place those cars at any point and did you place them at any point, these fourteen I mean, in compliance with their request?

A. I did not have any orders to place them any where—not from that concern.

Q. Did you have any orders from your superiors to place them any where for the Greensboro Ice and Coal Company?

A. No, sir.

521 Redirect examination by Mr. KING:

Q. They were placed as you have heretofore testified?

A. Yes, sir.

Q. When they started the construction of this trestle, did I understand you to say that they had to raise up this track and move it over several feet, to allow them space to work?

A. They raised the track up and put the rails under it and let it remain that (way) until they built the grade there.

Q. They jacked them up and then filled in until they got the trestle through.

A. Yes, sir.

Q. And nothing suspended them but the two rails?

A. That is all.

Q. In your opinion, could that portion of the track be safely operated during the construction?

A. No, sir.

Q. In view of the grade of this portion of the track outside of the fence and between the main line, even with that jack switch there, I will ask you if it is not dangerous in view of that grade—is there not danger of the cars getting loose there and running down on the main line?

A. Yes, sir; if they get loose there they would run down and they might accidentally get on the maintrack.

Q. The grade is heavy?

A. Yes, sir; it is pretty steep from the main line to the trestle.

Recross examination by Mr. JUSTICE:

Q. Are there any cars on that track now?

A. I do not know. I have not been there this morning.

Q. They put them there now, since this trestle was built, to be unloaded by teams?

A. I have seen one or two there.

Re-redirect examination by Mr. KING:

Q. You say you do not know whether there is room enough between the switch, as now constructed, and up to where this track was suspended, to place a car, during the construction of the trestle?

A. In that little spur track?

522 Q. Yes, between the switch and where the track was suspended?

A. No, sir.

Examination by Chairman MCNEILL:

W. When this car was on the outside of the fence of the Greensboro Ice and Coal Company, was it accessible to a team?

A. Before the track was torn up?

Q. You stated that during the time that this track was torn up some cars were placed on the outside of the fence of the Greensboro Ice and Coal Company?

A. That was before this track was pulled around; of course it is a fill there and a sort of bad place for a team to get to to unload.

Q. Is it a place that is accessible for a team?

A. Yes, sir; a team can drive up to the side of the fence.

Q. Inside or outside?

A. Inside. It is right around a curve.

Q. Suppose there was wood there?

A. He only had a little pile of wood and that was towards the end next to the saw.

Q. There was no wood in the way of these cars?

A. No, sir; he could have gotten there.

Q. Where the cars were placed?

A. Yes, sir.

Q. How high is the fence there?

A. I guess it is six feet high or something like that.

Q. Was it nearly as high as a car?

A. No, sir.

Q. What ever unloading was done would be with a shovel over that fence?

A. Yes, sir; they have unloaded over that fence. I have seen them do it within the last two months. We put a car of coal there that stood at the bin ten days.

Re-recross examination by Mr. JUSTICE:

Q. How many cars did you put there?

A. Four.

523 Re-re-redirect examination by Mr. KING:

Q. Would there have been any difficulty in unloading out of the cars into a wagon there over the fence?

A. No, sir.

J. C. MURCHISON, witness for defendant, being duly sworn, testifies as follows:

Direct examination by Mr. NORTHROP:

Q. What is your name and business?

A. J. C. Murchison is my name. I am secretary and treasurer of the Greensboro Furniture and Manufacturing Company.

Q. Have you had any experience with the operation of the car service rules?

A. Yes, sir.

Q. In what way?

A. I have had to pay some a time or two. I have never had but three or four cases of car service that I have had to pay.

Q. You have had experience as a railroad man and as a merchan with the operation of the car service rules?

A. I never had any direct connection with the car service while was a railroad man.

Q. Do you know of the operation of these rules?

A. Yes, sir.

Q. What is your opinion as to the beneficial character as to the car service rules?

A. I am an advocate of the car service rules.

Q. For what reason?

A. I think they are the proper thing from a business standpoint. In the first place, I think the car service rules are absolutely necessary for the railroads.

Cross-examination by Mr. JUSTICE:

Q. Have you ever seen the rules?

A. I think so, but I am not perfectly familiar with them.

Re-direct examination by Mr. KING:

Q. In your opinion are they necessary as reasonable rules?

A. Yes, sir; I think so.

524 Re-recross-examination by Mr. JUSTICE:

Q. But do you not mean to say that these particular regulations that they have here are reasonable?

A. No; I have not seen them very carefully since I quit railroading.

Q. You would not like to be bound in defense to say that each rule is reasonable, unless you knew what they were?

A. No, sir.

Q. The reason that you think they are beneficial to shippers is that they result in a speedy turning loose of the cars by shippers so that they can be used?

A. Yes, sir.

Q. I will ask you if, in your opinion as an expert, you think that it is beneficial to the shippers for a railroad company to undertake to collect a claim which is for demurrage, which is disputed, by not delivering cars on a siding where they can be quickly unloaded, and holding them for a long period on the yard?

(Objection by defendant. Objection sustained.)

Q. You have been in the railroad business?

A. Yes, sir.

Q. I will ask you if a coal chute for a company that does the business that the Greensboro Ice and Coal Company does with the railroad, is not a mutual benefit to the railroad and the company?

A. Yes, sir; if properly handled it is.

—. And if the railroad refuses to use the chute, it does it to its own injury as well as to the company? Is that not right?

(Objection by defendant. Objection sustained.)

Chairman McNeill: How long has it been since you have been in the railroad service?

A. About four years.

W. E. Schenck, a witness for defendant, being duly sworn, testifies, as follows:

Direct examination by Mr. Strong:

Q. What is your name and occupation?

A. Weldon E. Schenck. I am chief clerk at the freight depot in Greensboro with the Southern Railway Company.

Q. As such, what are your duties?

525 A. I have general supervision over the clerks and all of the work that is done in the freight office.

Q. State whether or not you have had any conversation with Mr. Thompson with reference to the car-loads of coal in question?

A. Yes, sir.

Q. State what that conversation was?

A. I don't know that I can give the words, but it was in substance to ask him to pay the car service which had accrued upon the cars we had then for delivery, and to ask him if he would pay it. He first said that he did not know whether he would pay the car service, and I rather insisted that he should pay the whole car service, and if there was any reason by which he should not have to pay it afterwards, it would be refunded to him. He then said that he would rather determine upon the amount, and that he would then pay what was finally determined upon.

Q. Did he agree to pay that amount?

A. Yes, sir; I so understood him.

Q. State what time that was, with reference to the placing of the four carloads of coal embraced in this order?

A. Do I understand you——

Q. What cars are you talking about?

A. I am speaking of the original cars.

Q. In consequence of this promise, what did you do?

A. I did not issue any order to take the cars off of the track that were there, or issue any order to stop delivery of the remainder of the cars. That was the reason of my seeing what steps we should take as to the collection of the car service.

Q. In consequence of this promise, did you place any other cars on the track?

A. Yes, sir; we placed the remainder of the cars—some of them, but I do not know exactly how many.

Q. Did you, or not, receive any demurrage charges on the c
you were speaking of, from the Greensboro Ice and Coal Company?
A. No, sir; we did not.
Q. In consequence of that what was done by the railroad co
pany?
—. We notified them that after a certain date, I forget th
526 exact date, we would not switch on to his private tracks, an
let the cars go out of our possession, but that we would d
liver the cars to him on the regular city delivery tracks.

Cross-examination by Mr. JUSTICE:

Q. Do you write the notices generally that are signed by Mr
Coffin?
A. Not the postal notices of arrival—that is done by the car servic
clerk.
Q. Did you write the notice to Mr. Thompson, in regard to this
dispute about the demurrage, the letters which have been intro-
duced?
A. Yes, sir; I think I wrote each of those. I can identify each
one?
Q. Mr. Schenck, the first charge for demurrage by the rail road
was on account of charges which accrued on cars that were on the
yard while this trestle was being built?
A. Yes, sir.
Q. You never had a charge against Mr. Thompson before that
time, that he did not settle?
A. Not that I know of.
Q. These fourteen cars arrived and were not delivered to him on
his siding at all while the trestle was being built, were they?
A. We could not deliver them on the siding—there was no siding
there.
Q. They were not delivered on the siding?
A. They were not delivered on his siding; no, sir.
Q. I call your attention to Exhibit No. "3." Did you write that?
A. (Witness reads Exhibit No. "3.") No, sir, I did not sign that.
Q. Did you dictate it?
A. It may have been taken from dictation I gave; yes, sir.
(Mr. Justice then reads the letter, Exhibit No. "3.")
Q. Now, you say there that he has refused to comply with regu-
lations of the car service association by declining to pay charges.
Those are the charges that you made for demurrage while the trestle
was being constructed, on the fourteen cars?
A. Yes, sir.
527 Q. That is what charges you referred to?
A. That was the charge that was due on the cars at the
time we delivered them on his chute.
Q. And those are the original fourteen cars?
A. Yes, sir.

Q. That demurrage accrued while the trestle was being built according to your own contention, before it was ready to receive cars?

A. Yes, sir.

Q. Now, Mr. Schenck, this notice says that these cars "were detained before unloading on your private track.

A. I mean by that sir, that the cars were delivered to him on his private track, and the car service having accrued and being due on them when they were delivered in his possession.

Q. Yes, that is what you mean?

A. That is what I said.

Q. (Mr. Justice reads the letter again.)

"This action is made necessary by reason of your refusal to comply with car service regulations declining to pay reasonable charges for the use of cars that have been detained before unloading on your private track." Now, does that no- say that they were detained on his private track before unloading?

A. I did not so mean it.

Q. That is what the language means?

A. I do not think so.

Q. Well, that is a case of construction of language?

A. I think so.

Q. As a matter of fact they were not detained on his private track, so as to make him liable for demurrage?

A. There was no private track at the time his cars were there.

Q. He did not detain any cars on this spur track that leads out in the direction of his plant?

A. None of his cars were put on the spur track.

Q. Then that is another way of answering no to my question?

A. I reckon so, sir.

Q. Do you know anything of this letter, Exhibit No. 2?

(Mr. Justice reads the letter.)

528 Q. Do you know anything of that?

A. No sir.

Q. You know the railroad company nailed the iron on the trestle?

A. Of my own knowledge, I do not.

Q. You know that the railroad company used the trestle after the iron was placed there, by putting cars on it?

A. Yes, sir.

Q. Now, Mr. Schenck, did you write letter, Exhibit No. 5, dated November the 11th, or dictate it?

(Mr. Justice shows letter to witness.)

(Witness reads the letter.)

A. Yes, sir; I dictated it.

Q. The sole ground upon which you put your refusal to deliver cars upon this trestle, as it now is, was the failure and refusal of the Greensboro Ice and Coal Company to pay the charges that accrued by reason of these fourteen cars being detained?

A. And, also, that there was no assurance but that he might re ue the same way in the future.

Q. Then to change the question a little—the sole grounds we his failure and refusal to pay demurrage assessment growing out these fourteen cars and a desire on your part for security that would pay in the future such assessments as might be made again him?

A. Yes, sir.

Q. Under that arrangement, if he had entered into it and give you a bond to pay in the future, who would have passed upon th question as to whether those assessments were proper—as to th amount of the demurrage and the justness of it?

A. We would have assessed him under the rules of the North Caro lina car service association.

Q. Who would have passed upon the question as to whether th assessment was made under the rule?

A. The manager of the North Carolina car service association an the railroad company—ourselves as agents.

Q. What remedy would Mr. Thompson have, if he had though the assessment unjust, if he had given that bond?

529 (Objection by defendant. Objection overruled. Ex ception.)

A. For instance, in assessing a freight charge we have regula rules by which that assessment is made and we have a published rat of freight, or rules, and whatever the published rate said, we would have charged that.

Q. Don't you sometimes have disputes with shippers about freight rates?

A. Yes sir.

Q. Under this arrangement, Mr. Thompson would have had no say so, as to whether he had any dispute about it?

A. We would have heard it, if he had had any reason, but I do not know that I personally would have referred to beyond the manage ment of the car service association.

Q. And after hearing him, you would have passed judgment?

A. If he had wished it we would have referred it beyond our selves.

Q. To whom?

A. To the manager of the association.

Q. And then?

A. To the officials of the railroad company.

Q. And then after the officials of the car service association and the railroad company had made up their minds about it, then how would you proceed?

A. If I had instruction to collect it, I would have collected it under the bond.

Q. Now, Mr. Schenck, Mr. Thompson would have been charged by you freight and demurrage charges. You would have passed on

that question just as you have passed on the other question of demurrage that you are disputing about—the demurrage on these fourteen cars?

A. You mean all of the future claims?

Q. Yes, sir.

A. Yes, sir; further delay would have been passed on in the same manner, I suppose.

Q. I will ask you, if you have not, in respect to that very charge, after having been ordered by the corporation commission to place cars on the track, that Mr. Thompson has constructed for the reception of his cars, refused to obey the order of the corporation commission?

A. I have not seen the order.

530 Q. You know of its existence?

A. I do not know that I do. I have not seen it.

Q. Have you the power to obey the instructions of the corporation commission?

(Objection by defendant.)

A. I am a servant of the railroad company.

Q. Mr. Schenck, who issues the notices?

A. The car service clerk.

Q. Who is that?

A. Mr. Alley.

Q. Are you familiar with the rules of the corporation commission in regard to demurrage charges?

A. In a way I have read them over.

Q. I will ask you if you don't know it is a fact, that under the rules of the corporation commission, the demurrage can be charged within 48 hours, and not before 48 hours, after notice has been given as prescribed by the rule? You know that to be a fact?

A. I think that is the rule.

Q. Now, I will ask you if you gave notice or if your company gave notice? I will read you the rule of the corporation commission: "No storage or demurrage charges, however, shall in any case be allowed unless notice of the arrival of the goods has been given to the owner or consignee thereof by the railroad company, and it shall be the duty of such railroad company to give prompt notice to consignee of the arrival of goods, together with the contents, weight and amount of freight charges due thereon as shown by way-bill, and when goods or freight of any kind, in car-load consignments said notice must contain letters or initials and number of the car." Now, this rule requires that you shall give in the notice the weight and amount of freight due on each shipment. These notices that you gave for these fourteen cars have not either the weight or the amount of freight due. Did you give any notice to Mr. Thompson of the weight of the freight and the amount of freight due on these cars?

A. I did not individually do any of that. I do not know
531 that I have ever seen these notices, and as far as I individually know, no notice was given. I expect the men to do that—to give the notices. I do not do it myself.

Q. No notices were given, as prescribed by the rules of the corporation commission, so far as you know?

A. No, sir; I do not know individually about that I expect the men to do it.

Q. You did not place these cars on the trestle for the reason you have assigned. I will ask you if you had gone on and placed the cars on the trestle and relied on your right to collect the demurrage out of Mr. Thompson, if the result would not have been to release the cars more readily than the way you are running?

(Objection by defendant.)

A. I do not know that I am the proper person to give that information.

Q. Don't you know that they could unload cars more rapidly from this siding of Mr. Thompson's than they could in any other way?

(Objection by defendant.)

Q. Don't you know that is a fact?

A. I do not know about that.

Q. You do know that you can unload cars faster there than over a trestle or any other track. That being true, in order to punish Mr. Thompson's company, you are inconveniencing your road and other shippers?

(Objection by defendant.)

A. I do not know.

Q. You said awhile ago that Mr. Thompson told you that he would pay the amount of demurrage that would ultimately be determined to be due?

A. That was finally determined by the car service association that we should collect.

Q. Did he agree to leave it to the association?

A. I understood so.

Q. Did he use that language, or say what charges were just?

A. He did not say what charges were just.

Q. Could you give me his exact answer?

A. No, sir.

532 Q. Well, did he not agree positively to leave it to the manager of the association?

A. Yes, sir; he agreed to leave it to what ever Mr. Albright should say.

Q. He agreed to leave it with Mr. Albright?

A. Yes sir.

Q. Did you not tell Mr. Thompson over the 'phone that his attitude in the matter had been consistent throughout?

A. I do not remember any such conversation?

Q. Did you not tell him over the 'phone that his position in regard to his liability for this demurrage has been the same all the way through?

A. I do not know that I did. He said so himself. He said, "My position has been just the same as it always has." I told him "I understood you to say you would pay what was finally determined upon that you should pay."

Q. What did he say in reply?

A. He said, "You and I differ as to our recollection of what was said."

Q. Did you get your impression that Mr. Thompson was to settle it by that fact, that you say you understood Mr. Thompson to agree to pay whatever was finally determined or agreed upon to be correct?

A. Yes, sir; because I was acting under Mr. Albright's instructions in the matter.

Q. And you understood him to say he would pay what ever was finally determined upon to be correct?

A. Yes, sir.

Q. Just before the cars were placed, do you remember to have called Mr. Thompson up over the 'phone, after this conversation you speak of in which you understood him to say that he would pay whatever was finally determined to be correct, and in your conversation did you ask him if he was still not willing to pay the demurrage and he said to you that it was a matter for you to decide as to whether you would deliver those cars, without his agreement?

A. That was before the conversation. I think it was the day before.

Q. He did tell you that?

A. There might have been a conversation to that effect but I think it was the day before.

Q. It was before the cars were placed?

A. It was before the chute was completed.

533 Q. He told you before the cars were placed that it was a question for you to settle as to whether you would deliver the cars before he promised to pay the demurrage?

A. No, I do not know about that; I do not think so.

Q. Did you not threaten to not let him have the cars unless he paid the demurrage?

A. I said, "I do not believe I can let you have the cars unless you pay the demurrage."

Q. Didn't he say that that was a matter for you to determine?

A. I do not know that he said that.

Q. After Mr. Thompson had notified you that he was not going to pay this demurrage, after you had placed the fourteen cars, did you not still deliver cars to him, in fact all cars that arrived before the 17th?

A. We delivered all cars to Mr. Thompson that arrived on the yard before the notice.

Q. Before the embargo?

A. Yes, sir.

Q. You delivered cars after the day that you wrote the embargo the 12th, and up to the 17th, the day on which it was to go into effect, and you had notice on the day that you wrote the embargo that he would not pay this demurrage?

A. Yes, sir.

Q. You said that you would be the judge of this matter if Mr. Thompson had given the bond? Now, these demurrage rules that are made, these rules are against the company and against the shipper? They are mutually against both?

A. I do not know that I individually would have passed upon it at all.

Q. Well, I mean the company. You know that the demurrage rules are mutual?

A. Yes, sir.

—. Now, Mr. Schenck, you proposed in this matter to constitute the railroad company, the court and the judge. Have you ever—has your company ever paid demurrage charges to any shipper in Greensboro?

A. I do not think that we were the proper people to take up that and make charges.

Q. Have you not held cars——

(Objection by defendant.)

534 Q. Have you now, Mr. Schenck, has not the railroad company held cars on its tracks *in* the yard at Greensboro until it has, under the rules, become liable for demurrage, and done that a number of times within the last six months, to your knowledge?

(Objection by defendant. Sustained.)

Q. Has your railroad company held cars as many as fifty times within the last twelve months, so as to violate that rule, right here in Greensboro?

(Objection by defendant. Sustained.)

Q. I will ask you following that up, if having done that fifty times, if your railroad company has ever paid anybody a dollar for violating the demurrage rules, or the rules of the corporation commision, that I have just read?

(Objection by defendant. Sustained.)

Q. I will ask you if your railroad company has not threat- to put an embargo on a man here in Greensboro on account of his not paying a claim of $2.00 for demurrage, which was not due?

A. No, sir; we have not done any such thing.

(Objection by defendant.)

Redirect examination by Mr. STRONG:

Q. Mr. Schenck, Mr. Albright's name has been mentioned by
u in your cross-examination—who is Mr. Albright? What posi-
on does he hold?
A. He is manager of the North Carolina car service association.
Q. State in what way this matter of demurrage is handled?
A. We have a set of rules issued by the North Carolina car serv-
e association.
Q. Would you know those rules if you saw them.
A. Yes, sir.
Q. Are these the rules? (Showing him the rules of the North
rolina car service association.)
A. Yes, sir.
Q. State whether or not they are the rules now promulgated or
effect?

(Objection by plaintiff.)

A. Yes, sir

(Defendant proposes to prove by this witness that the
uthern Railway Company in Greensboro, and all of its agencies,
course, elsewhere, make out certain reports to the manager of the
r service association in Raleigh, and that the manager of the car
rvice association in Raleigh is familiar with the rules promulgated
the North Carolina corporation commission, and advises the
al agents what to do in respect to matters arising under car serv-
e regulations and demurrage. I wish further to show that not
braced in the rules of the North Carolina car service association,
ere are certain rules, and regulations and instructions gotten out
the North Carolina car service association for the enlighten-
ent and guidance of the agents of the railroads, and that under
le 11, section 2, on page 8, of the car service rules, are the follow-
g words: "In case consignees or consignors refuse to pay, or un-
cessarily demur settlements of bills for car service charges, the rail-
ad shall, upon notice to that effect to the manager, refuse to switch
y cars for such consignee or consignor until such charges are paid,"
nd that the rules made by the North Carolina car service associa-
on were filed with the North Carolina corporation commission some
me during the month of July, about the 15th,1903, and that the
orth Carolina corporation commission and the manager of the
orth Carolina car service association consulted upon these rules.)
(Objection by plaintiff. Sustained.)

Mr. STRONG: I also wish to introduce as evidence, either now or
the proper time, the present rules upon this subject now, made
the North Carolina corporation commission. We consider your
les as evidence.

(Introduces and files rules of the North Carolina car service com-
ission, Exhibit No. 8.)

Mr. STRONG: I also wish to put in evidence by this witness, the

rules of the North Carolina car service association referred to in my former question.

536 (Objection by plaintiff. Objection sustained. Exception by defendant railroad company.)

(Defendant proposes to introduce rule 11, page 8, of the North Carolina car service association, saying that these were the rules governing when any person would not pay the demurrage demanded.)

(Objection by plaintiff. Sustained. Exception.)

Q. State whether or not you have sent a letter or telegram to P. R. Albright, manager, in substance as follows: "Greensboro, N. C., Nov. 7th, 1903. Your wire date the Greensboro Ice and Coal Company have agreed to pay the car service which you may assess on the cars at Greensboro, after you have investigated the matter and made charge."

A. Yes, sir.

(Telegram introduced as evidence and filed. Marked Exhibit No. 9.)

Q. You were speaking about it being easy to unload cars on a coal chute. Would that be true of all sorts of cars of coal?

A. It would be only those with drop bottoms. Flat bottom cars would be easier to unload from team tracks.

Q. As to the car service—all demurrage charges that accrued upon the thirteen cars of coal and wood, state how that accrued with reference to the time of the delivery by the railroad company to the Greensboro Ice and Coal Company?

A. How accured as to the time of delivery?

Q. Whether before or after delivery?

A. Why, part of it was after delivery and the other part was previous to delivery.

Q. Have you any knowledge of any cars of coal that were ordered to be placed on the track leading up to the yard, during the time of the construction of the trestle or the chute?

A. No, sir; not that I know of.

Q. Any cars of coal? Have you had knowledge of any cars of coal that were ordered to be placed on that track leading up to the yard, during the time of the construction of the chute?

A. Not of my own knowledge.

Q. Have you ever ordered any of these cars of coal to be placed there?

A. No, sir.

537 Q. Can you state how many car-loads of coal and wood were held out during the construction of this coal chute for the Greensboro Ice and Coal Company, and the length of time that they were held out?

A. There were thirteen cars, I think, and they were held out 233 days according to my record.

Q. Was that during the construction of the coal chute?

A. Yes, sir.

Q. After the cars in question, or some of them, were placed upon the private track of the Greensboro Ice and Coal Company, do you know whether or not any demurrage accrued?

A. Yes, sir; I believe there was some—about $4, I believe.

Recross examination by Mr. JUSTICE:

Q. You say that there was something that accrued after the cars were placed on the company's track?

A. Yes, sir; you mean on the ice company's track?

Q. Yes. Which of the fourteen was it on?

A. I would have to get the record to tell you. N. & W. 11440.

Q. What time was that delivery to the Greensboro Ice and Coal Company?

A. At 8 p. m. on the 1st.

Q. What time did you get it back?

A. 8 p. m. on the 2nd.

Q. Where do you get that record?

A. From my car service clerk's book record.

Q. You can not say of your knowledge that that is correct?

A. No, sir.

Q. Mr. Thompson has it released at 7 a. m. Can you say of your own knowledge that he was wrong about that?

A. Does he say exactly 7? I can not say of my own personal knowledge.

Q. If it is true, there would be no demurrage on the car?

A. If it was released at 7 exactly, there would only be the $1 you speak of.

338 Q. Would there by any? Didn't he have from 8 o'clock in the evening until 7 o'clock in the morning without demurrage?

A. There was $3 car service due on it before placed there.

Q. I am talking about any that accrued after it went in there?

A. It would have car service on it while it was there, as it had no free time at all.

Q. If the date of delivery was 8 p. m. on October 1st, then there would be no demurrage charges on it at all, if it was released the next day?

A. If a new car and the time was not already out on it, there would be no demurrage.

Q. The question as to whether there was demurrage on it before it went in there is disputed by Mr. Thompson and you—between you and him?

A. Yes, sir; I suppose it is.

Q. But after it went in on his track, if that was the date of the delivery, there would be no proper demurrage charges?

A. If that was the date of delivery, then there would not be any.

Q. And what you say of that is true of all of these cars?

A. Well, yes.

Q. It is suggested that I ask you—you know the business that the Southern Railway Company does here—could it carry on its business at all without private sidings here in Greensboro? Could it, with its present freight business, carry on its business unless it had private sidings here? In other words, had it facilities with out private sidings?

(Objection by defendant. Objection overruled. Exception.)

A. I do not know that I am competent to judge whether it could or not.

Q. How long have you been clerk down there?

A. About fifteen years.

Q. Don't you know that if they did not have private sidings that their freight cars would always be blocked on the yard?

A. They could not reach outside parties without sidings.

539 I do not know that it would inconvenience the railroad as much as it would parties outside.

Q. If there were the same number of freight cars coming into Greensboro and the same quantity of freight as now comes, without the private sidings, would not the condition down there be so congested that you could not deliver the freight any thing like as rapidly as you do now?

(Objection by defendant. Overruled.)

A. I would say that with the present team tracks, they could not handle the business. They could not deliver the cars.

Re-redirect examination by Mr. STRONG:

Q. I wish you would explain more fully with reference to the demurrage charges which you say accrued after the cars were placed on the private siding of the Greensboro Ice and Coal Company, with reference to the time of expiration and the time allowed for the unloading?

A. If, for instance, that car had been unloaded prior to 7 o'clock, why, there would not have been one of the dollars for the demurrage. The time of computing the car service commences at 7 o'clock a. m. If delivered the evening before at 6 p. m., the dollar due for that day is already due, so after 7 o'clock commences another day, and it would be a dollar for any portion of a day.

Q. Now, as I understand you, some of these cars that were placed on the private siding of the Greensboro Ice and Coal Company had already had the demurrage to begin to accrue at the time of the unloading?

A. Yes, sir.

Mr. F. W. JACKSON, a witness for defendant, being recalled on the stand, testifies as follows:

Re-re-recross examination by Mr. JUSTICE:

Q. Mr. Jackson, I wanted to know which of all of the fourteen cars, upon which the original demurrage was charged, you
540 had placed before the trestle was completed on October 1st? You said you would get your record.

A. Of the fourteen before that trestle was built?

Q. Yes, sir; while it was being built?

A. I thought you was talking about the last cars they got.

Q. No, sir; I knew about them. I am not talking about them, and what I asked you about was whether it was those fourteen cars or any of them, and if you might not be talking about other cars that had arrived since that time?

A. They was the ones I was talking about.

Q. Then you have not, as a matter of fact, any record of having placed any of these fourteen cars before the trestle was finished.

A. What cars? Yes, sir.

Q. The dates were from the 14th, about long there. There is a car that arrived on the 14th of September and which was placed on the first day of October, N. & W. 46826. Mr. Jackson, you may want to correct your testimony. You said this morning that from the time this trestle began to be built up to the time it was completed, that some of these fourteen cars upon which the original demurrage was charged, were placed by you. Were any of them placed during that time?

A. The first that came in before the building of the trestle—before the chute was finished?

Q. Yes, sir.

A. Yes, sir; some of them were placed.

Q. Now, give me which ones?

Chairman MCNEILL: Did you place any cars in September for the Greensboro Ice and Coal Company?

A. Yes, sir; I remember one of them was a stock car—No. 42, something, and I think another was a S. F. & W. car.

Q. Does your record show that?

A. No, sir; I do not see it in this book. One was a Coast Line car?

Mr. JUSTICE: You have a record for that period?

A. The ninth month. I have got the 9-17 here in this book to the 10-31.

Q. That carries you from the 17th of September to the 31st of October. What is that other book?

541 A. That is one back of that. That runs from 8-16.

Q. Where is the one for the first of September?

A. That is the one I can not find, it got lost some way or other.

Q. From the 17th of September up to the 1st of October, you did not place any did you?

A. I have not got it in this book. I had another book but it go wet and came to pieces.

Q. Would you not have had it in that book though?

A. No, sir; when this book runs out I get another one.

Q. The book you have in your right hand, you say began on th 17th of September and ran out on the 31st of October? That i right is it not?

A. Yes, sir.

Q. Does not that book show that between those times, the 17th o September and the 31st of October, you ever placed a car for this com pany?

A. I think it does. Greensboro Ice and Coal Company, 22224 10-10.

Q. That is after it was finished. From the 17th of September t the 1st of October, does your book show that you placed any cars fo the Greensboro Ice and Coal Company, during that period?

A. I do not know whether this one does or not, but I had one tha did. This one here runs from 9-17 to 10-31.

Q. Do you know what nine and ten means?

A. Yes, sir; the ninth month and tenth day.

Q. Do you know what it means?

A. It means the month and day of the year?

Q. What month is the ninth?

A. September.

Q. Then from September the 17th, up to October the 1st, is there any record of a car having been placed for this Greensboro Ice and Coal Company?

(Witness examines his book for a minute or so, but gives no answer.)

Q. Mr. Jackson, does the proper delivery of those cars down there depend on you?

A. All of the placing does.

Q. You are the conductor?

A. Yes, sir; I work one engine.

542 Q. Do you get your cars as badly mixed as you do your books?

A. No, sir; I had another book and I got it wet one evening and it came all to pieces. That is one the car numbers is on. I could not find it anywhere.

Mr. P. R. ALBRIGHT, a witness for defendant, being duly sworn, testifies as follows:

Direct examination by Mr. STRONG:

Q. Mr. Albright, what is your position?

A. Manager of the North Carolina car service association.

Q. Where is your office?

A. Raleigh, N. C.

Q. State whether or not you are familiar with the rules of the North Carolina corporation commission?

A. I am sir.

Q. I wish you would please state to the court, as to what is done in causing the various railroad agents in North Carolina to live up to those rules?

(Objection by plaintiff. Sustained.)

Q. I will ask you, Mr. Albright, as to whether the methods pursued towards the Greensboro Ice and Coal Company are not applicable to all companies of like nature?

(Objection by plaintiff.)

A. Yes, sir.

Q. Mr. Albright, did you ever have any conversation with Mr. Thompson, with reference to this matter?

A. I did.

Q. Will you please state what that conversation was—as to what was said on both sides?

A. I came to Greensboro on the morning of the 9th of October, and in company with Mr. Coffin, the agent, called on Mr. Thompson at his office. I told him that I was surprised to learn from the agent that the claim that we had made for car detention against the Greensboro Ice and Coal Company was turned down, or in other words that the car service charges had not been met. I told him I would like to go over the situation with him and if there was any thing wrong in connection with the amounts that we had charged against
543 him, that I should be very glad to go into it fully and correct it. Mr. Thompson in answer to my request for settlement of the charges, gave me a general reply, refusing to pay them, based upon the fact that the construction of this chute being a benefit, in his opinion, to the railway company, we ought not to consider any questions of back charges against them. I explained to Mr. Thompson in that connection that the loss to the railway company had been great in caring for those cars—that some of them probably had been detained from the lines of the owners for some considerable length of time, and for which the Southern railway would have to pay the N. & W. a dollar a day for us- of these cars. That I came to Greensboro for the purpose of endeavoring to settle the matter with him, and wanted personal knowledge of the conditions under which the charges accrued, and I attempted to gather from him and other sources the details of the detention. I finally, after discussing the matter at some length with Mr. Thompson and Mr. Coffin, we were all there together, told him that we would divide the loss with him, on account of the car service.

Q. Did you tell him that as a matter of compromise?

A. Yes, sir; as a matter of compromise, simply to close the matter up, that was all. Mr. Thompson stated, in answer to that, that if he were forced to pay those charges he would enter some

counter-claim, of which I had no knowledge, and the details of which were not given and I was not familiar with. That is about all in substance, sir, that passed between us; only in leaving him, I explained our rule to him, and the conditions, and that we regretted very much to be forced to the position of declining to part with the lien on the property, by placing cars on his private yard.

Q. State whether or not you made this a personal matter or whether that is your rule that governs all such matters?

(Objection by plaintiff. Overruled.)

Q. Answer as to whether you had any personal feeling in the matter as to the Greensboro Ice and Coal Company.

A. None whatever. And I so explained to Mr. Thompson in this conversation on that day. It was purely a business transaction.

Q. Mr. Albright, please state whether or not, any notifica-
544 tion was given by you to the Greensboro Ice and Coal Company, as to the refusal to switch cars upon their private track, and when, if so?

A. On the 9th of October, at the same time we discussed the payment of these charges, I advised Mr. Thompson what the result would be.

Q. State whether or not you had any information from the agent of the Southern Railway Company here, as to the progress of this matter between the Southern railway and the Greensboro Ice and Coal Company?

A. In what regard?

Q. In regard to the conditions of the cars, etc.?

A. I was advised from day to day.

Q. State whether or not, being advised, you did anything in regard to that?

A. I was advised on the evening of October 1st, if my memory serves me correctly, by long distance 'phone—sometime during the day of October 1st, or September 30th, by Mr. Schenck.

Q. By whom?

A. Mr. Schenck, chief clerk to Mr. Coffin, to the effect that some 13 or 14 cars had accumulated on the Greensboro yard, pending the construction of a chute on their yard, and wanted to know what to do about the detention charges; and I advised him to collect them. He said something about there being some contention on the part of the Greensboro Ice and Coal Company about these charges.

Q. Now, Mr. Albright, without going into particulars, state in this particular matter, if you gave advice as to what disposition was to be made of the cars, and what was to be done in regard to the situation?

A. Upon receipt of this advice, I instructed Mr. Schenck to proceed in the matter under section 2 of rule 11.

Mr. JUSTICE: Of what?

A. Car service rules.

(Objection by plaintiff.)

Q. Mr. Albright, state whether or not the agent of the Southern Railway Company at Greensboro, acted under your directions in regard to these cars, demurrage, and the placing of the cars, etc., for the Greensboro Ice and Coal Company.

(Objection by plaintiff. Objection overruled. Exception.)

545 A. Yes, sir.

Q. Is there any thing else you would like to state?

A. No, sir.

Cross-examination by Mr. JUSTICE:

Q. Do you know as a fact that the charge made against the Greensboro Ice and Coal Company, on account of the failure to deliver cars, was as to the fourteen cars which arrived here at Greensboro, while the trestle was being built?

A. Thirteen cars, I understand, sir.

Q. It accrued out of the thirteen, then?

A. Yes, sir; there may possibly have been one car on which no charges accrued.

Q. You do not understand that there was any car placed on the side track which leads to the Greensboro Ice and Coal Company's plant which remained there for a sufficient length of time for demurrage charges to accrue?

A. Do I understand you to say on the main line, up to the line of the property of the Greensboro Ice and Coal Company?

Q. Yes, sir.

A. I have no knowledge of that.

Q. After the 1st of October, there was no car detained by the Greensboro Ice and Coal Company long enough for demurrage to accrue?

A. Yes, sir; I think so.

Q. What cars?

A. Perhaps I might make it clear, Mr. Justice, to explain in that connection that it was impossible or impracticable to have unloaded the entire thirteen cars of coal within twenty-four hours after the completion of the trestle, because the cars were placed in the evening. Under the car service rules of the corporation commission the free time begins at 7 o'clock a. m. Under the expiration of time as figured, the time of these charges expired at 7 o'clock, the free time having already expired immediately after the arrival of the cars on the team track.

546 Q. I understand that before these thirteen cars were placed on the side track leading to the Greensboro Ice and Coal Company's plant, you claimed that there was demurrage due on them?

A. Yes, sir.

Q. Now, the-, if you take it as settled, for the purpose of this question, that that demurrage was improperly charged, and that the date of delivery was the date upon which they were placed on the (track)

to be unloaded, then they did remain on the track a sufficient ti
before unloaded for demurrage to have accrued?

A. If permitted under such rule, there would not be.

Q. Now, as to whether the demurrage which you have charg
against the ice and coal company for these cars before they passed
to that track, counting the free period while they stood on the r
road yard, as to that the question depends upon whether there wa
delivery of these cars to the ice and coal company, under the rules
the corporation commission?

A. I take it there was a tender to deliver all of those cars.

Q. The question as to whether the demurrage was proper depen
upon the question of delivery. There are no facts between you all
dispute, except what facts there are to present that one question.

A. I do not admit of any dispute of the propriety of the charg
I think that they are correct.

Q. Mr. Thompson says they are not correct.

A. I claim that he does ow- it and he disputes it.

Q. And the facts out of which that dispute arises are that those c
were on the railroad yards while this trestle was being construct
and you claim that during that period, or at least a part of it, the
ac-rued demurrage charges which you say were proper, but he sa
that that is not correct?

A. That is right, sir.

Q. Are you familiar with the rules of the North Carolina corpo
tion commission?

A. Yes, sir.

Q. Do you know whether notice was given of the arrival and pl
ing of these cars, as required by the rule of that commission?

A. I can not say of my own personal knowledge; no sir;
547 know what my instructions were in regard to that.

Q. You know that the rule requires that notice be giv
of the weight and the freight due?

A. I do not, sir.

Q. Please read rule one.

A. (Witness reads rule.) I would like to add that the vast han
ling of freight frequently causes the displacement of the way-bil
and the way-bill is left over and the car moves on a card way-bi
and the card manifests only sufficient information to get the car
its destination.

Q. It is the duty of the railroad company to carry the way-b
forward?

A. No, sir.

Q. That is the custom?

A. No, sir.

Q. Have you seen the notices that were issued to this compan
of the arrival of the thirteen cars?

A. I have not. I only saw them over your shoulder.

Q. You have not examined them, and you do not know t
weights were given out or not?

A. No, sir.

Q. Mr. Albright, this trestle down here would be of service to the railroad and shippers generally, because it enables the unloading of cars with greater facility—is that not true?

A. I do not think so.

Q. You do not think this trestle would enable the cars to be unloaded more rapidly?

A. It is possible, but I have had a great deal of experience of following up the cars, and I find that they are handled at the convenience of the consignees and I find that they are not always on the look-out to get them unloaded promptly and to make use of this convenience. Statistics do not bear out the assertion that in all cases they receive as great benefit as the consignees.

Q. If this Greensboro Ice and Coal Company receives about 45 cars in 40 days, about a car a day, don't you think that a trestle by which they can unload by just dropping the bottom out of these cars, will facilitate the handling of that business rather than having to unload it by shovels and wagons?

(Objection by defendant. Overruled. Exception.)

548 Q. I ask you if the coal can not be unloaded with greater facility on this trestle than on a team track?

A. Unquestionably a man can unload his coal promptly, depending upon the facilities he has. If he has a chute, and has the mind to do so, he can dump a load of coal from a car in thirty minutes, but I would like to add to that, that that is the matter entirely in the hands of the unloader, or the consignees, the railroad having no control to further the unloading of that coal in thirty minutes or thirty hours. The consignees, as a rule, adapt themselves to these rules, which require that they unload in a certain time.

Q. I understand, Mr. Albright, that if a man takes a car on his chute and will not unload it, he will not do it any quicker any way; but if he does the best he can, you could get the car quicker than you could if it was on a team track? Why are the cars made so that you can drop the bottom out?

A. They were originally made for the purpose of dumping coal into bins or other places.

Q. To unload coal quicker?

A. Largely.

Q. You can not unload it by dumping, except on a chute? You could not on a team track?

A. Yes, sir; a good many unload in that way.

Q. Have you ever seen it done that way in this city?

A. Yes, sir.

Q. If it is done that way, then the coal has to be shoveled up from under the car off of the track?

A. Yes, sir; from underneath the car.

Q. Then that takes as long as shovelling it out?

A. That is a question of facilities.

(Defendant rests.)

Mr. F. A. MATTHEWS, a witness for plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. COOK:

549 Q. Mr. Matthews, I believe you are a coal dealer here in Greensboro ?

A. Yes, sir.

Q. How long have you been in the coal business ?

A. Ten years.

Q. State whether or not it would be practicable for you to do your business, getting as many cars as you do, and unload from the team track, hauling your coal around to your bins?

(Objection by defendant. Sustained.)

Q. I will ask you if it would be practicable for the ice and coal company to do this ?

(Objection by defendant. Overruled. Exception.)

A. No, sir.

Q. Have you bins at your place of business ?

A. Yes, sir.

Q. Are those bins used by you now ?

A. Yes, sir.

Q. I will ask you if, as a general thing they are not filled up with the coal that belongs to you ?

A. Yes, sir; we have had it filled since August.

Q. And I will ask you if they were accessible to any body else beside you during the time we are talking about ?

A. We filled up all of the bins in August with 500 tons of coal.

Cross-examination by Mr. KING:

Q. Mr. Matthews, that road leading into where you store your coal belongs to the Southern Railway Company ?

A. Yes, sir.

Q. I will ask you if there is not space near back down to the point where the cars come into the yard, where coal can be dumped, that is not used by you ?

A. No, sir; not now. That coal bin is accessible to anybody else that wants to use it and put coal there, but we have it filled now.

Q. But it is there for anybody else ?

A. Yes, sir.

Q. And you put your coal there, and I have a right to put mine there and the Greensboro Ice and Coal Company has the right to put their's in there ?

A. Yes, sir; if they get it first, they use it as well as we can.

550 Mr J. T. B. SHAW, witness for the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. JUSTICE:

Q. Where do you live ?
A. In Greensboro.
Q. What is your business ?
A. Lumber dealer. I am receiver of the Greensboro Lumber Company.
Q. Where is your place of business ?
A. On Lewis street.
Q. Where with respect to the Greensboro Ice and Coal Company's plant ?
A. Right along by the side of it.
Q. You heard the witness, Mr. Jackson, speak of a car coming on a track of the Greensboro Ice and Coal Company—a forty foot car—that tore the fence down.
A. Yes, sir.
Q. That was the south track. Whose track is that ? Who uses that track ?
A. The Greensboro Lumber Company, Pitts and Munroe, and E. E. Bain.
Q. State whether or not that track is generally pretty well in use ?
A. Yes, sir.
Q. Where were you during the month of September ?
A. Right there close to the house.
Q. Every day ?
A. Yes, sir.
Q. Did you see any car, or cars, of the Greensboro Ice and Coal Company standing on that track during the month of September, or any part of it ?
A. I could not say positively; I do not think I did. I am not quite sure.
Q. Did any of their cars stand there for ten days ?
A. Not that I know of; I think not, because we had some lumber standing there most of the time.
Q. I was trying to find out whether some cars were placed there and staid there several days waiting to be unloaded, right by the fence of the Greensboro Ice and Coal Company ?
A. I think not, sir.
Q. Suppose a car of coal had been placed on that track right next to the fence, what were the facilities for unloading it into a
551 wagon on the other side of the fence ?
A. I do not see how that could be exactly. There is quite a lot of wood there, in fact it had fallen over on the track. They would have had to move the wood before shifting.
Q. At this time was there a pile of wood there on the other side?
A. Yes, sir; higher than the fence.

Q. Was there in September?
A. Yes, sir.

Cross-examination by Mr. KING:

Q. Do you pretend to say that nobody else but the Greensboro Lumber Company, Pitts and Monroe and Bain run over that track?
A. No, sir.
Q. Don't you know, as a matter of fact, that they shift any body and everybody's cars in there?
A. Probably so.
Q. But you do see others coming in there?
A. Yes, sir; but I do not know whose these were.
Q. You do not pretend to say that they do not put cars on there for the Greensboro Ice and Coal Company?
A. No, sir.
Q. Don't you know that they have a bin over there just on the other side of the fence, and that they have unloaded into it?
A. Yes, sir, but not recently.
Q. But they have a bin there?
A. Yes, sir.
Q. And they have unloaded into it?
A. Yes, sir.
Q. And they can drive a wagon up there and unload?
A. No, sir; not recently because wood is all piled up there.
Q. You mean down near the saw?
A. I mean down near the fence—I thought that was your question.
Q. East of there could they not throw their coal over? Is there not enough space for three cars to stand when the cars stand close up to the fence?
A. About three, I think.
Q. I will ask you, if putting a car on the east end, if they could not throw it over there and avoid this trouble?
A. I think not, Mr. King.
Q. What is the reason?
A. Because there was wood piled up there.
552 Q. How did it get there?
A. The coal and ice company put it there, I guess.
Q. Where did the cars stand?
A. On the track.
Q. On what track?
A. The railroad track.
Q. Which one?
A. This side track.
Q. Then they do unload from there their wood and coal?
A. I have never seen them unload coal from there.
Q. You have known it to be done?
A. No, not down next to the Greensboro Lumber Company.

Q. They have unloaded cars next to the Greensboro Lumber Company?
A. Yes, sir.
Q. And you do not pretend to say that they did not have cars of oal standing there during that period?
A. No, sir.
Q. And they do switch cars in and out there some time to suit the onvenience of the people and the convenience of the railroad?
A. Yes, sir.

Mr. C. C. TOWNSEND, a witness for plaintiff, being duly sworn, stifies as follows:

Direct examination by Mr. JUSTICE:

Q. Where do you live?
A. Greensboro.
Q. What is your busines?
A. Dealer in agricultural implements.
Q. Do you know the side track that leads from the Southern main e to the Greensboro Ice and Coal Company's plant?
A. Yes, sir.
Q. Do you know when the ice and coal company was building a stle there?
A. Yes, sir.
Q. During the time that this trestle was being constructed, when re was no track at the place the trestle was being built, was that ck between there and the main line of the Southern railway used?
A. Yes, sir.
Q. Who used it?
A. I unloaded one car there.
Q. What was that car loaded with?
A. Lumber.
Q. How far was that car standing from the fence of the Greensro Ice and Coal Company when you unloaded it?
A. I suppose probably one hundred feet.
Q. How far from the main line of the Southern railway?
A. Just clear of it.
Q. How far down towards the ice and coal company's fence did track extend?
A. I suppose 100 or 150 feet.
Q. Was there anything to keep the cars from going down that ance?
A. I think the back end of the track was prized up and suspended ttle.
Q. How much of the track was there?
A. Probably 40 or 50 feet.
Q. How much did that leave between the Southern main line the point not prized up?
A. About 100 feet, I guess.

Q. Now, was that grade up or down from the main line?
A. At one time it was a little down, but after they prized up the other end, it was up a little.
Q. But from the main line how is it?
A. I think it is a little down.
Q. Who placed that car on that side track for you?
A. The Southern railway.
Q. With their shifting engine?
A. Yes, sir.
Q. Who was in charge of the yard at the time it was placed? What officer?
A. I really do not know. I made application to Mr. Alley.
Q. What position does he occupy?
A. He has charge of placing cars.
Q. In consequence of your application, it was placed down there?
A. Yes, sir.
Q. Do you remember the date of that?
A. No, sir.

554 Cross-examination by Mr. KING:

Q. You do not remember the date?
A. No, sir.
Q. And you do not remember whether that was right about the time they were at work there or not?
A. No, sir; I know they were at work there then.
Q. Were they on the inside or outside?
A. Inside.
Q. Do you know the distance from where this little side track leaves the main line up to the fence of the ice and coal company—do you know how far it is?
A. No, sir; I do not.
Q. You do not know whether it is 100, 150 or 200 feet?
A. I should say it is between 150 and 200 feet.
Q. And as a special accommodation they put this car there?
A. Yes, sir.
Q. You have never unloaded from there before?
A. Yes, sir; a great many.
Q. What they tender to you?
A. Some were box cars.
Q. That was before they commenced to repair there?
A. Yes, sir.
Q. Had they commenced to make this fill?
A. I think they were filling in on the other side of the track; in other words, they were making the dirt track of the trestle. I think that the track was moved over nearly the width of the track to get it up to the trestle.
Q. Did they move that track south or north?
A. They finally moved it south.

Q. Had they some of it suspended on railroad iron?
A. Yes, sir; the back end.
Q. And this one car was placed there for your accommodation?
A. Yes, sir.
Q. And that is the only one that you saw there during this construction period?
A. Yes, sir; the only one except the one placed there for this old tank. I remember that because I had to wait for that to be loaded to get mine put there.
555 Q. There was only room for one?
A. Yes, sir.

Redirect examination by Mr. JUSTICE:

Q. How long did you wait for this car to be loaded with the tank?
A. Think a day or two.
Q. It staid there over-night?
A. Yes, sir.

Recross examination by Mr. KING:

Q. How many?
A. I do not know, sir; I know it was one night.

Mr. T. M. BROWN, witness for plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. COOK:

Q. Mr. Brown, you have just heard Mr. Townsend's testimony about that part of the track. Do you remember when the ice and coal company had their trestle in process of construction?
A. Yes, sir.
Q. Do you remember at that time seeing any cars being loaded or unloaded from that part of the track not torn up?
A. I helped load one—that old tank.
Q. Was there anything the matter with the track?
A. Not where the car was standing.
Q. Did you have them scotch the car?
A. No, sir. I did not see them scotch it.
Q. How long did the car stand there?
A. I do not know exactly; it stood there about a day and a half, while we were unlaoding it.
Q. You left it there? Did it stand there over-night?
A. I do not know. It was there when I got back the next morning. We left it there and found it there.

Cross-examination by Mr. KING:

Q. What were you putting in?
A. I was loading the old water tank.
Q. That is all you know about it?

A. Yes, sir.

556 Q. As to whether it was scotched or not, or what arrangement was made to keep it there, you do not know?

A. No, sir; I never looked.

Mr. J. M. PEGRAM, witness for plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. COOK:

Q. Mr. Pegram, do you remember when the ice and coal company were building their trestle?

A. Yes, sir.

Q. Do you recall any part of the track that was not torn up at that time?

A. Yes, sir; there was a short spur of the track that I think was perfectly unmolested, for possibly a car length from the switch.

Q. Did you see any cars on that track during the time the coal company was building their trestle?

A. Yes, sir.

Q. Did you see the car that was referred to by Mr. Townsend as the car for the water-tank?

A. Yes, sir.

Q. Did you see the car of lumber for Mr. Townsend?

A. Yes, sir; I think that was during the time of the construction.

Q. Do you know that Mr. Sweatt unloaded a car there during that time?

A. I do not remember whether his car was on that track or the other track. I do not remember

Q. How many cars can you recall that were placed on that track during the time the trestle was being built?

A. I remember the one Mr. Townsend unloaded and the one for the tank to be loaded on. And it occurs to me that there was one or two cars left there during the night and moved next morning. That was about the time of the completion of the trestle or just before.

Cross-examination by Mr. KING:

Q. I will ask you, as a matter of fact, when Mr. Townsend's car was unloaded and the car for the water tank was unloaded, was that not right early after the starting of this work and before they

557 had disturbed the track much?

A. I can not say.

Q. And if shortly afterwards, it became so disturbed that they could not put anything on there at all? The nearer the completion of the chute, the more disturbed conditions were around there.

A. Yes, sir; I suppose so.

Q. Away back when first commenced, the disturbance was not so great?

A. No, sir.

Q. And the spur track was not molested until nearly completed?
A. No, sir.
Q. You think that there were two cars run back there about the time of completion of the trestle, and stood over one night?
Q. Yes, sir.

Redirect examination by Mr. COOK:

Q. Mr. Pegram, do you know whether or not that part of the track is now used as a team track, or for unloading?
A. It is frequently.
Q. Has it not been used since as a team track—since the coal company put in their trestle? Have not people unloaded there?
A. Have not the Guilford roller mills and others used it?
A. We have used it ourselves at the mill.
Q. Are you using it now?
A. Yes, sir; we are unloading a car there today.
Q. You find no difficulty with the track, do you?
A. No, sir; nothing except there is a slight grade. We scotch a car if it gets too heavy. If it gets one-half the distance, the grade is such that the car is usually scotched.
Q. It is not dangerous?
A. No, sir; I do not think so.

Recross examination by Mr. KING:

Q. That is right in front of your mill, is it not?
A. It is a little diagonal from the mill.
558 Q. It is right in your mill yard?
A. Yes, sir; it is really on the mill property.
Q. I will ask you, if parties who come in there, don't they drive on your land?
A. Yes, sir.
Q. It is not the railroad's land?
A. No, sir.
Q. The railroad company does not own a foot of land in there between your mill and that track?
A. No, sir; except down at the lower end. They have 25 feet on each side of the main line.
Q. All of the yard they talk about unloading on is on your ground, and it is by sufferance that I can go there, or anybody else?
A. Yes, sir.

Re-redirect examination by Mr. COOK:

Q. I will ask you if it is not a public way for people who travel?
A. Yes, sir; there is a provision in our deed for people to come in there.
Q. While unloading cars?
A. Yes, sir; it is not specified so. We have allowed cars to be un-

loaded there from the fact that it is an accommodation, but it is fr
quently a nuisance. They soon make it a public unloading place
our expense.

Re-recross examination by Mr. KING:

Q. So you say it disturbs you for people to unload there?
A. Yes, sir; it frequently does.
Q. I will ask you if this provision in your deed does not apply t
certain alleys, and this is not a public highway?
A. Yes, sir; it is not a public highway.

Mr. H. L. HICKS, witness for plaintiff, being duly sworn, testifie
as follows:

Direct examination by Mr. COOK:

Q. Mr. Hicks, where are you employed?
A. With the Greensboro Ice and Coal Company.
Q. What is your position?
A. Engineer.
559 Q. Do you recall when the ice and coal company wer
building their trestle?
A. Yes, sir; I was there all the time.
Q. Do you remember a part of the track, that has been referre
to as being torn up, just outside of the yard?
A. Yes, sir.
Q. Did you ask any of the Southern Railway Company's yar
conductors or yard master, or any of its employees to place a car, o
cars, on that track? I wish you would name the different person
you asked?

(Objection by defendant. Overruled. Exception.)

Q. I asked Mr. Whitaker.
Q. Who is he?
A. Yard master.
Q. How many times did you ask him?
A. I asked him twice in half a day.
Q. Do you remember asking him at any other time?
A. No, sir; not him.
Q. What did he say in reply?
A. There were two cars on the track at the time and I went t
him and asked him to pull out that empty car and place us a car in,
and they could also place the other car back, and he said he would
see the conductor and have it done. But he did not do it, and I
went back and asked him and he said he would not move it until
billed.
Q. Who else did you ask to place the cars?
A. I seen Mr. Jackson several times.

Q. How many times did you ask Mr. Jackson to place those cars on that track?

A. I could not say for certain, but a good many times.

Q. As many as half a dozen?

A. I should think so, on as many as half a dozen different days.

Q. On that many days?

A. Yes, sir; I should think so.

Q. Why were you so anxious?

(Witness does not answer this question.)

Q. Mr. Hicks, you remember the cars that came in the yards of the Southern Railway Company for the Greensboro Ice and Coal Company, when this trestle was in process of construction.

560 A. There was a good many good cars standing there on the side track that belonged to them.

Q. Were any of these cars placed on team tracks accessible for teams during that time?

A. I did not see any of them where they could be unloaded.

Q. Did you look to see?

A. I certainly did.

Q. Were you diligent?

A. I was.

Q. Why?

A. We needed the fuel.

Q. Do you know of any body else that you asked to place the cars?

A. No, sir; except I asked two conductors, Mr. Jackson and another man.

Q. Did you have any conversation with Mr. Alley about placing those cars?

A. No, sir.

Q. When Mr. Thompson, of the Greensboro Ice and Coal Company, was about to tear up this track, or was ready to tear up this track, state whether or not you went down and consulted the different representatives of the Southern Railway Company in regard to it, and who they were and what they said?

A. Yes, sir; Mr. Thompson told me to go down and see the road master and tell him that we were ready to have the track torn up.

Q. What was his name?

A. I do not know.

Q. Was his name Medaris?

A. Yes, sir.

Q. Was Mr. Medaris looking after the track there?

A. He was around there every day.

Q. What position does he hold?

A. I understand he was road master.

(Objection by defendant.)

Q. Did he come around that track every day to look after it for the Southern Railway Company?

(Objection by defendant.)

Q. I will ask you if the Southern railway did not send a crew men there to tear up this track?

A. Yes, sir.

Q. Was this man with them?

A. Yes, sir; he was there at the same time they came.

561 Q. Was he instructing them and looking after the work

A. Yes, sir.

Q. Mr. Hicks, do you know who spiked that switch that leads in the track of the Greensboro Ice and Coal Company?

A. I spiked it down.

Q. Under whose instructions?

A. This same man. The road master, I think he was.

Q. Was he present when you spiked it down?

A. Yes, sir; he set the spikes himself.

Q. How long did those spikes stay there?

A. I did not see them drawn, but only a few days.

Q. How long was it before you saw a car there?

A. Just a few days.

Q. What work was done on that track when the spikes were there

A. We were throwing the track over to its right place by the chute

Q. Did you lift the track?

A. No, sir; we slided it over.

Q. Over to the place which it now occupies?

A. Yes, sir.

Q. Did this switch not remain open from that time until you finished the trestle?

A. Yes, sir.

Q. How many cars did you see upon that track during the time that the ice and coal company was building their trestle?

A. Four cars.

Q. Can you specify them? Do you know who they were for?

A. Mr. Townsend unloaded a car of lumber there.

Q. Who else?

A. This tank was loaded there.

Q. Can you recall any body else?

A. Those other two cars were dead cars.

Q. Did they stay in there over night?

A. They were put in at night.

Q. After the trestle was built and the railroad company had given one or two shifts to the Greensboro Ice and Coal Company, state whether or not there was an interval of a day or two that there was no shift at all.

A. Yes, sir, there was some time.

562 Q. How long was that time?

A. I think it was about two days. I cannot specify the number of hours.

Q. I will ask you if a part of that track could not have been used at almost any time after those spikes were taken out.

(Objection by defendant.)

Q. Were there not times when that track was unoccupied?
A. Yes, sir.
Q. And was it not possible for the Greensboro Ice and Coal Company to have used that track at that time?

(Objection by defendant. Overruled. Exception.)

A. Yes, sir.
Q. Was not that track in exactly the same condition *until* the time the spikes were taken out until the time the rails were moved? Was anything done to that track and was it not in the same condition it was after those spikes were taken out up to the time it was elevated for the trestle?

(Objection by defendant. Overruled.)

A. Yes, sir; it was in the same condition.
Q. Who did the work of grading the trestle outside of the yard?
A. I did that with a gang of hands myself.
Q. Who for?
A. The ice and coal company.

Cross-examination by Mr. KING:

Q. Do you know where the public team tracks are there by the old depot?
A. Yes, sir.
Q. Do you know where the team tracks are east of Davie street that we talked about this morning?
A. No, sir, I do not.
Q. You are not prepared to say that they did not place any cars over there?
A. I did not see them over there.
Q. You did not look for them?
A. Yes, sir, I did.
Q. You said just now you did not know where that track was?
A. I do not know just that track, but I looked the whole yard over.
563 Q. You went and looked, and do not know now, and did not know then, where the track was?
A. I looked on all of the tracks.
Q. What cars were you looking for—what were the marks on them?
A. I had the cards, and I was looking for the cars it called for.
Q. And you went over between South Elm and Davie streets?
A. Yes, sir.
Q. When?
—. When — were trying to get them placed.
Q. And how many times?
A. I do not know.

Q. Did you go twice?
A. Yes, sir.
Q. Three times?
A. Yes, I went half a dozen times.
Q. And you went to the tracks east of Davie street?
A. Yes, sir.
Q. And you say those cars consigned to the Greensboro Ice and Coal Company were not put on that track?
A. I did not see them there.
Q. You say they were not there?
A. I can not say that. I did not see them.
Q. Where did you find them?
A. I found the most of them on Glasscock's side track.
Q. In the neighborhood of your foundry?
A. Yes, sir.
Q. Where were the others?
A. Some were close tom the scales.
Q. And some around on that track spoken of by Mr. Shaw?
A. I did not see any there.
Q. Didn't you see car of hard coal there—No. 1818, N. & W.?
A. We unloaded a car of hard coal there.
Q. Didn't you see a car load standing there?
A. Yes, sir.
Q. When?
A. At the time the trestle was being put up.
Q. Then you did unload some there?
A. Yes, sir; I unloaded that coal there.
Q. You have unloaded some there before?
A. I did not unload coal.
Q. Did not the company?
A. Coal?
564 Q. Yes, sir.
A. No, sir.
Q. They had a coal bin there?
A. I built that bin there.
Q. And you say the coal company never had a bin there until then?
A. No, sir; there was no bin there at all.
Q. And you put that one up?
A. Yes, sir.
Q. You unloaded wood there?
A. Yes, sir.
Q. Didn't you know that Mr. Thompson would not take that coal from that team track between Davie and South Elm streets?
A. He never told me so.
Q. Did he order you, if you could get the car located over there to unload it there?
A. No, sir.
Q. Would you have unloaded them there?

(Objection by plaintiff.)

Q. Don't you know that Mr. Thompson has at all times declined to take any cars unless put on his yard?
A. He never told me so.
Q. You don't know that?
A. He never told me so.
Q. Do you say you don't know that?
A. Mr. Thompson didn't tell me so.
Q. Did you not know that?

Mr. Chairman, you see how the witness tries to evade my question.
Chairman McNeill: The witness may just go ahead and answer his question.

A. Yes, sir; the book-keeper told me so.
Q. That they would not unload it unless it was on the chute?
A. Yes, sir.

Redirect examination by Mr. Cook:

Q. What cars were you referring to when you said that Mr. Thompson said he would not accept them on the team track? Was that after the embargo was to him, or before?
A. After the embargo.
Q. I will ask you if the unloading of that wood on that siding on the south side of the Greensboro Ice and Coal Company was not done long before the trestle was torn up?
A. Yes, sir.
565 Q. And I will ask you if there was not wood all along there, so as to prevent teams from getting up there?
—. Yes, sir.

Mr. M. W. Thompson, being recalled by the defendant, testifies as follows:

Examination by Mr. Strong:

Q. Mr. Thompson, there was a good deal of testimony here about that 150 feet of track that runs from the main line to your premises. What I want to ask you is, of the five car loads of coal, did you ever make a request of the railroad to put any of those cars upon the 150 feet of track?
A. I gave Mr. Alley a general order to place our cars on that track, and we would accept them there.
Q. When was that given?
A. I do not know the exact date. I gave that to Mr. Alley in the corner of our yard, in front of the Armour Packing Company.
Q. Was it given as to those five cars?
A. I gave the order for all cars.
Q. At what time did you give the general order?
A. I could not tell the date.

Q. When was it in reference to the time that your trestle was constructed?

A. It was some time about the time we began the trestle. We did not tear the tracks up then; they were not torn up for a week after we started the trestle.

Direct examination by Mr. JUSTICE:

Q. Mr. Schenck sais some thing about a conversation he had with you. What conversation did you have with Mr. Schenck?

A. What time?

Q. He spoke of a time when you agreed to pay the demurrage that might be finally determined upon to be due.

A. Well, Mr. Schenck spoke to me on two occasions, and at both different times I refused to pay the demurrage. Once in Mr. Coffin's office, and Mr. Schenck and Mr. Coffin were there, and I said, "We are not willing to pay the charges; they are unjust." He
566 had no intimation from me that we ever intended to pay one cent on that demurrage. The only chance he had for thinking so, was that I said to him that if they insisted on presenting this claim to us, we would send counter-claim for demurrage due us, and if they would pay our claim we would pay theirs.

Q. Was that in writing?

A. No, sir.

Q. Did you subsequently wri-e that?

A. Yes, sir. The second time I was in a conversation with Mr. Schenck over the 'phone, and this was also before these cars were placed. He asked me whether we intended to pay the demurrage, and I told him that the question as to whether or not he would place the cars was with him, and that we did not intend to pay the demurrage. That conversation was heard by our book-keeper in the office. He heard me refuse to pay Mr. Coffin.

Q. When was that?

A. Subsequent to the cars being placed. The third time Messrs. Albright and Coffin came over in person and went over the situation. I told them the ground on which we refused to pay the amount. I took Mr. Albright out and showed him where we wanted the cars placed—showed him the piece of track—and he did not agree to stand one-half of it, as he stated. That was made one or two days later. Mr. Coffin sent over to see if I would pay one-half. I refused to pay that, telling him the claim was unjust, and to make us pay it was unjust. That was also heard by my book-keeper.

Mr. JUSTICE: When you refused the last time to pay this demurrage, did they after that time place any cars on your track?

A. They continued placing cars on our track up until October 16 or 17, when the embargo went into effect.

Q. This last conversation was before October the 17th?

A. Yes, sir; all of the conversations were before the 17th of October.

Q. Are there any cars held now by them, which they held at the me you last refused to pay this demurrage?

A. I do not know. They came over several times to see if the natter could be adjusted, by our settling in accordance with their de- ision. They were pressing the matter, and the last time, I believe, hey threatened to unload the cars and store them at our expense, if the demurrage was not paid.

67 Q. Mr. Thompson, you said that you had three conversations in which you refused to pay the demurrage?

A. Four.

Q. Has the railroad now any cars which it had at the time you efused last to pay that demurrage?

A. No, sir, I believe all cars were shipped prior to the 17th were placed, although it was eight days before one was placed.

Q. The last cars they placed for you on your side track, they had full knowledge that you were not going to pay this demurrage at that time?

A. They certainly did.

Q. You know what they call this south track of the Greensboro Lumber Company, close to the fence, is it possible or practicable to unload cars there to a wagon? With cars on the track and wagons on the inside of the fence?

(Objection by defendant. Overruled.)

A. Why, if it were possible to get a wagon near the fence, it would be possible to unload from there. It was all blocked up with refuse of the saw and wood at another place. There was no way for a team to get over to the fence.

Q. Did that condition exist while the trestle was being built?

A. Yes, sir, it did.

Q. When was that car-load of coal placed in the bin?

A. It was some time shortly before they started the trestle. It was impossible to put any car at that point. There was a car of coal unloaded at that point, and it was impossible to unload any other there. That track is so close to the main line that it would be impossible to unload there.

Q. Was there any time from the date on which you began work on your trestle until you began to slide the track around to get it upmon the embankment, that this spur track would not have received your cars?

A. Possibly there were two or three days, when other people were using the track.

Q. With that exception was there any time?

A. No, sir; with that exception the track was empty all the time

568 Q. Was it in condition to have received those cars?

A. Yes, sir; they could have placed our cars there if they had been disposed to.

Q. Was that track in the same condition it was when they placed those other cars there?

A. Yes, sir.

Q. Is there anything else that you know of that would be of enlightenment to the court?

A. No, sir; not that I can think of.

Cross-examination by Mr. STRONG:

Q. Mr. Thompson, if the car loads of coal had been unloaded on the south side of your property there and thrown over into your yard, would it have been practicable for you to have made some arrangement whereby your teams could have gotten that coal and carried it around to your customers in and around Greensboro?

A. If I wanted to go to the expense of constructing something to carry the coal over the refuse and the amount of wood that was there, it could have been done. It would have been at a considerable expense.

Q. How much?

A. I do not know; I have not figured it out.

Q. Did you know that the wood and coal that was on those cars was ordered, when you started to construct that trestle?

A. Certainly I did.

Q. Would it not have been possible for you to have moved the wood up, so you could throw your coal over there?

A. I did not know when we were going to get permission to construct the trestle.

Q. Did you not have to move that wood up to the front—up to the saw?

A. Yes, sir; if we wanted to saw it.

Q. Why did you not move it at the time you began to construct the trestle?

A. Well, we were filled up there. If we had moved it, we would have put it in the way of the saw.

Q. You did not have any where else to put the wood? Could you not have moved the wood about a car's length, or perhaps less, and have thrown the coal out from the car into your property, without having to disturb so much of the wood?

A. Don't you understand—we had unloaded 30 or 35 cars of wood.

569 Q. I did not know that. Could you not have moved part of the wood so you could have hauled your coal there?

A. No, we could only have moved it two feet.

Q. I am not talking about that other side—I am talking about within your yard, at the south opening of the yard, that being a distance of 200 or 250 feet, could you not have moved the wood and gotten your teams in there and unloaded your cars?

A. We did not have orders to haul that coal out some where.

Q. You could have left it there and used it as you got your orders?

A. Yes, sir; but it would have been at considerable expense.

Q. Could you not have moved your wood and stored your coal there and kept it there for orders, and could not your teams have gotten there to deliver it?

A. Yes, sir; but it would have been at more expense than by getting it where we asked them to deliver it to us.

Q. As to that last car of coal after the embargo had gone into effect. This was placed there because previous to that time the Southern Railway Company had promised to place it there, and they carried out the instructions of the embargo. They would place all cars before the 17th of October?

A. Yes, sir.

Q. So they did that because they said they would do it, and not for the embargo?

A. Yes, sir; they said they were going to put a penalty on us, but they agreed to let us live until it went into effect.

Q. They only placed it because they said they would do so?

A. Yes, sir.

Redirect examination by Mr. JUSTICE:

Q. Did they ever deliver to you any cars during the period that you were building this track—or constructing your trestle on the south track, or the Greensboro lumber track?

A. No, sir; there was one car referred to for us to unload and bill made for it, but that——

570 Q. That was before the trestle was started?

A. Yes, sir.

Q. Did they ever deliver to you on that track any cars which were not unloaded by you?

A. They never delivered me these cars at any point whatever.

Recross-examination by Mr. STRONG:

Q. You mean to say that Mr. Jackson never went to you and told you that those cars were there?

A. No, sir; he never told me anything about those cars.

Q. Had they been put there on that track to the south of your property, or anywhere else, would you have taken them and unloaded them?

A. If they had been put at any point on our yard where we could have unloaded them, we would have done so.

Q. If put on any place on the team track of the Southern railway in Greensboro, would you have unloaded them?

571

EXHIBIT No. "1."

Cars Placed on Siding.

Car number.	Arrived.	Placed.	Released.	Demurrage.
N. & W. 46826,	9-14	10-1, 8.00 p. m.	10-2, 1.00 a. m.	12
Do. 10514,	9-19	10-1, 8.00 p. m.	10-2, 4.00 a. m.	7
Do. 12172,	9-19	10-1, 8.00 p. m.	10-2, 7.00 a. m.	10
Do. 11440,	9-24	10-1, 8.00 p. m.	10-2, 7.00 a. m.	3
Do. 6104,	9-29	10-2, 8.00 a. m.	10-2, 11.20 a. m.	
Do. 6047,	9-29	10-2, 8.00 a. m.	10-2, 11.20 a / m.	
Do. 7565,	9-29	10-2, 8.00 a. m.	10-2, 11.20 a. m.	
Do. 11032,	10-2	10-2, 12.00 m.	10-2, 4.00 p. m.	
Do. 1818,	9-9	10-2, 12.00 m.	10-2, 6.00 p. m.	17
A. C. L. 20724, wood	9-10	10-3, 11.00 p. m.	10-4, 10.00 a. m.	17
Delay of two days, no shifting done.				
S. F. W. 8707, wood	9-10	10-6, 3.00 a. m.	10-6, 11.00 a. m.	17
S. O. U 42543, wood	9-19	10-6, 3.00 a. m.	10-6, 11.00 a. m.	11
A. C. L. 18782, wood	9-25	10-7, 11.45 a. m.	10-7, 4.00 p. m.	7
Do. 21625, wood	9-14	10-7, 11.45 a. m.	10-7, 4.00 p. m.	17
Bill presented.....				$118
S. O. U. 71426,	10-6	10-8, 8.00 a. m.	10-8, 10 p. m.	
A. C. L. 9812,	9-25	10-8, 8.00 a. m.	10-8, 2.00 p. m.	
Do. 16295,	10-6	10-8, 8.00 a. m.	10-8, 2.00 a. m.	
N. & W. 6234,	10-7	10-10, 9.40 p. m.	10-10, 6.00 p. m.	
Do. 22224,	10-2	10-10, 9.40 a. m.	10-10, 6.00 p. m.	
C. & O. 19931,	.....	10-11, 10.00 a. m.	10-11, 2.00 p. m.	
A. C. L. 14478,	9-23	10-11, 10.00 a. m.	10-11, 4.00 p. m.	
S. O. U. 66804,	10-13	10-14, 7.00 a. m.	10-14, 10.00 a. m.	
Do. 62146,	10-13	10-14, 11.00 a. m.	10-15, 8.00 a. m.	
N. & W. 23773,	10-14	10-26, 9.00 a. m.	10-26, 4.00 p. m.	

Cars Held on Yard, Delivery Refused.

N. & W. 12565,	arrived 10-19.	Freight paid, 10-27.
S. O. U. 70734,	10-19.	10-27.
C. & O. 17895,	10-19.	10-27.
S. O. U. 9281,	10-20.	10-27.
N. & W. 23283,	10-20.	10-27.
C. & O. 18747,	10-23.	10-29.
S. O. U. 43194,	10-25.	10-27.
N. & W. 5885,	10-26.	10-29.
S. O. U 12983,	10-26.	11-3.
N. & W. 11502,	10-28.	11-3.
Do. 10725,	10-28.	11-3.
Do. 6783,	10-30.	11-3.
A. C. L. 20085,	11-2.	11-3.
S. O. U. 43106,	11-2.	10-10.
A. C. L. 22517,	11-9.	10-10.
Do. 20033,	11-2.	10-10.

572 EXHIBIT No. "2."

Southern Railway Company.

Office of Superintendent.

GREENSBORO, N. C., *August* 20–'03 ch.

File C–266.

Greensboro Ice and Coal Company, Greensboro, N. C.

DEAR SIR:—Referring to conversation this morning. There is no objection from a railroad standpoint to your changing the line and erecting a trestle as indicated on the attached sketch, providing, of cour-e, that the change of line and trestle meets with the requirements of the Southern railroad, and that all of the work is done by your own men and at your own expense.

When the work is completed, it will be passed upon by Mr. Wells.

Yours truly, E. H. COAPMAN,
Superintendent.

EXHIBIT No. "3."

Southern Railway Company.
Office of ——.

GREENSBORO, N. C., *October* 12, 1903.

Greensboro Ice and Coal Company, Mr. M. W. Thompson, manager.

DEAR SIR:—Please take notice that commencing 12:00 noon, October 17th, 1903, this company will decline to switch any cars to your private siding, in the yards of your company at Greensboro, N. C., and will only make delivery to you on the public team tracks of this company in the yards at Greensboro, N. C. This action is made necessary by reason of your refusal to comply with car service regulations, declining to pay reasonable charges for the use of cars that have been detained before unloading on your
573 private track above referred to, and that we find it necessary for the protection of our equipment to tender you further deliveries upon tracks where cars may be under our immediate supervision and control.

Agent, W. E. COFFIN,
Southern Railway Company.

EXHIBIT No. "4."

Southern Railway Company.
Office of ——.

GREENSBORO, N. C., *Nov.* 11, 1903.

Greensboro Ice and Coal Company, Greensboro, N. C.

GENTLEMEN:—Your letter tenth will refer you to my letter October 12th, in which you were advised that by reason of refusal to comply with car service regulations, switching your private track would be discontinued. Cars mentioned in your letter have been tendered to you on team tracks, and we have been ready at all times to deliver same to you on team tracks, or upon payment of charges due on the former cars, and these you now mention, and guarantee in a manner satisfactory to us the payment of future charges on private track, to place cars on such private track. We deny that you have any claim against this company for detention, that these cars in our possession are delayed solely by reason of your arbitrary action, and that instead we have a lien upon these cars, car service at rate one dollar per day, properly chargeable to you for neglect in unloading.

Yours truly, W. E. COFFIN, *Agent*,
S.

EXHIBIT No. "5."

GREENSBORO, N. C., *Oct.* 31*st*, 1903.

Greensboro Ice and Coal Co., Greensboro, N. C.

GENTLEMEN:—Referring to your letter of October 27th, asking that we place certain cars on your private siding. We are
574 not prepared to comply with your request so far as placing in your private yard is concerned, but we can offer you these cars upon our team tracks, and we will place them promptly upon your order to that effect, independent of the old account for car service, upon payment of the car service, which has accumulated on each of these cars since tendered to you upon team tracks, and which you decline to accept.

I attach statement of car service up to the night of October 31st, that is now due upon cars in our yard for you.

Yours truly, W. E. COFFIN, *Agent*,
S.

EXHIBIT No. "6."

Southern Railway Company.

Office of ——.

GREENSBORO, N. C., *Nov.* 7, 1903.

Mr. M. W. Thompson, secretary Greensboro Ice and Coal Co., Greensboro, N. C.

DEAR SIR:—Referring to your inquiry as to whether or not I think the chute that you have erected is a benefit to the Greensboro yard, I will state that it most decidedly is, as it has enabled you to release cars in half the time as heretofore, and is therefore of mutual benefit.

Respectfully,

R. O. WHITAKER,
Yard Master.

EXHIBIT No. "7."

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 19, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

575 The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Articles.	Initials.	Number.	X Number.
Coal.	N & W	10514	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. Sept. 21st 1903.

This company will be liable only as warehousemen while the L. C. L. freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

576 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 14, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Articles.	Initials.	Number	X Number.
Coal.	So.	46826	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. September 15, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

577 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 24, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Articles.	Initials.	Number.	X Number.
Coal.	N & W	11440	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. September 25, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

578 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 29, 1903.

Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is read for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Articles.	Initials.	Number.	X Number.
Three Cars Coal.	N & W	6047	
	"	6104	
	"	7565	

Freight and charges $.....storage charges will accrue on le than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to charge of.....dollars per day, or fraction of a day for detentio and use of tracks, if not unloaded within 72 hours from 7 a. m September 30th, 1903.

This company will be liable only as warehousemen while the C. L. Freight is in their possession, holding same only at owner's ris of loss by fire.

Strangers must present evidence of ownership, or be identifie before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consigne

579 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Oct. 2, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pr. No.

Articles.	Initials.	Number.	X Number.
Coal.	N & W	11032	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. October 3, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

580

Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 10, 1903.
Consignee.	**Address.**
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is rea
for delivery to you from

Shipper.	Station.	Date.	Pro. No.

Articles.	Initials.	Number.	X Number.
Wood.	S. F. & W.	8707	
"	A. C. L.	20724	

Freight and charges $.....storage charges will accrue on l
than car-load freight after.....hours from.....o'clock....
of the date of this notice. Car-load shipments will be subject to
charge of.....dollars per day, or fraction of a day for detenti
and use of tracks, if not unloaded within 48 hours from 7 a.
September 11, 1903.

This company will be liable only as warehousemen while the
C. L. Freight is in their possession, holding same only at owner's ri
of loss by fire.

Strangers must present evidence of ownership, or be identifie
before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consigne

581 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 25, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Articles.	Initials.	Number.	X Number.
Wood.	A. C. L.	18782 9812	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 48 hours from 7 a. m. September 26th 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

582 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Oct. 19, 1903
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Articles.	Initials.	Number.	X Number.
Coal.	So. N & W	70734 12565	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. October 20th, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

583 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 14, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Articles.	Initials.	Number.	X Number.
Wood.	A. C. L.	21625	

Freight and charges $————storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 48 hours from 7 a. m. September 15, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

584 & 585 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 19, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Articles.	Initials.	Number.	X Number.
Wood.	So.	42543	

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 48 hours from 7 a. m September 21, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

586 Form 2192.

Southern Railway Company.

Station.	Date.
Greensboro, N. C.	Sept. 9, 1903.
Consignee.	Address.
G'boro I. & C. Co.	

The following freight consigned to you has arrived, and is ready for delivery to you from

Shipper.	Station.	Date.	Pro. No.
Articles.	Initials.	Number.	X Number.
Coal.	N & W	1818	12172

Freight and charges $.....storage charges will accrue on less than car-load freight after.....hours from.....o'clock..... of the date of this notice. Car-load shipments will be subject to a charge of.....dollars per day, or fraction of a day for detention and use of tracks, if not unloaded within 72 hours from 7 a. m. September 10, 1903.

This company will be liable only as warehousemen while the L. C. L. Freight is in their possession, holding same only at owner's risk of loss by fire.

Strangers must present evidence of ownership, or be identified, before delivery will be made.

W. E. COFFIN, *Agent.*

Sign this notice, authorizing delivery to bearer,

or .....

.....Consignee.

587 EXHIBIT No. "8."

Office of North Carolina Corporation Commission.

RALEIGH, *July* 9, 1903.

Circular No. 36.

(As Amended.)

Storage and Demurrage Rules.—Time Limit for Placing or Cars and Delivery of Freight.—Local Transfer and Switching Charges. Storage and demurrage may be assessed by railroad companies on all freight received for delivery in car load lots or in less than car load lots if not removed in conformity with the following rules and regulations:

RULE I.

No storage or demurrage charges, however, shall in any case be allowed unless notice of the arrival of goods has been given to the owner or consignee thereof by the railroad company, and it shall be the duty of such railroad company to give prompt notice to consignee of the arrival of goods, together with the contents, weight and amount of freight charges due thereon as shown by the way-bill, and when goods or freight of any kind, in car load consignments, said notice must contain letters or initials and number of the car. Notice shall be given by delivering same in writing in person, or by leaving same at consignee's place of business, or by depositing it in the post office.

RULE II.

For storage of package freights and all freight less than car load, unloaded in depot or warehouse, which is not removed by the owner thereof from the custody of the railroad company within forty-eight hours (not including Sundays and legal holidays), a charge of storage for each day or fraction of a day that such consignment may remain in the custody of the carrier of one cent per hundred pounds per day, with minimum charge of five cents for any
588 one package or lot for any one consignee, may be made; but no more than one dollar per day for any one consignment not in excess of a car load.

RULE III.

All car load freight taking track delivery and such as is to be unloaded by consignee, which is not unloaded from cars containing

same within forty-eight hours (not including Sundays and legal holidays) after the car or cars are placed accessible for unloading, may be subject to a charge of one dollar per car for each day or fraction of a day that said car or cars remain loaded: Provided, however, that seventy two hours shall be allowed for the unloading of fertilizers, brick and the following commodities, when in bulk only: Cotton seed, cotton seed hulls, coal, coke, fertilizing material, grain, lime, tan bark, and dressed lumber in box cars.

Provided further, whenever by reason of delays in transit cars are bunched and more cars than one are received at same time, no demurrage shall be made for excess over one car; provided, at least one car shall be unloaded daily.

RULE IV.

When consignors ship goods consigned to themselves or order, it shall be the duty of the railroad company to give legal notice to such consignees or persons to whom shipping directions order delivery. This notice may be addressed by mail to the consignee at point of delivery, and demurrage will begin as in other cases of notice by mail; and the mailing of such notice shall be sufficient notice in such cases, whether the consignee actually received the same or not.

RULE V.

The time allowed for removing freight before storage or demurrage charges apply will be computed from 7 o'clock a. m. of the day following date of notice (Sundays and legal holidays excepted.)

589

RULE VI.

A consignee living more than five (5) miles from the depot, and whose freight is destined to his residence or place of business so located, shall not be subject to storage or demurrage charges allowed in the above rules until a sufficient time has elapsed after notice for said consignee to remove said goods by the exercise of due diligence: Provided, that in the delivery of car load freight railroads will not be required in any case to hold freight free of demurrage for a longer period than five (5) days after notice, except as otherwise provided in Rule II.

RULE VII.

Where, upon the request of an intending shipper, the railroad company places a car or cars at a reasonably accessible point on its team tracks, or on a private track designated by the shipper, free loading time shall expire forty-eight hours (not including Sundays or legal holidays) from the time such car or cars are so placed; and thereafter a demurrage charge of not more than one dollar per car

per day or fraction of a day may be assessed and collected on all such cars as have not been tendered to the railroad company with shipping instructions.

RULE VIII.

When any railroad company fails to deliver freights at the depot or to place loaded cars at an accessible place for unloading within forty-eight hours (not including Sundays and legal holidays), computed from 7 a. m., the day after the arrival of same, the shipper or consignee shall be paid one dollar per day for each day or fraction of a day said delivery is so delayed: Provided, the railroad company may require the payment of freight before delivery.

RULE IX.

Where a shipper makes application in writing for a car or cars to be loaded with any kind of freight, and the railroad company fails to furnish same within four days from 7 o'clock a. m. next day after such application, such railroad company so offending shall forfeit and pay to the shipper applying the sum of one dollar per
590 car per day for each day or fraction of a day's delay after the expiration of free time: Provided, the shipper makes demand therefor in writing within thirty days thereafter. The railroad companies may require applicant to deposit two dollars for each car so demanded. This money may be retained as a forfeit to the railroad company in case the car is not loaded, to pay trackage; if the car is loaded, then the said two dollars shall be refunded to the shipper with the bill of lading.

RULE X.

Whenever shipments have been received by any railroad company, such shipments destined to stations within a distance of fifty miles from starting point shall be delivered within three (3) days from 7 o'clock a. m. next day after receipt of shipment, and in one day's additional time for each additional twenty-five (25) miles or fraction thereof; or for failure to transport such *such* shipments within the time prescribed the railroad company shall forfeit and pay to the consignor or consignee the sum of one dollar per day on all car load freight and one cent per hundred pounds per day on package freights and freight in less than car load, with minimum charge of five cents for any one package: Provided, the shipper make demand therefor in writing within thirty days thereafter: Provided, further, that the amount of the penalty demanded on any shipment, less than car load, shall not exceed one dollar per day, and in no case exceed the value of the goods transported. The period of time during which the movement of trains is suspended on account of accident or any cause not within the power of the roads to prevent,

shall be added to the free time allowed herein and accounted as additional "free time."

RULE XI.

Whenever the weather during the period of free time is so severe, inclement or rainy that it is impracticable to secure means of removal or loading of freight, or where from the nature of the goods removal or loading would — injury or damage, such time shall be added to the free period, and no demurrage charges shall be
591 allowed for such additional time. This rule applies to the state of the weather during business hours.

RULE XII.

The commission reserves the right to hear and grant application to suspend the operation of these rules upon complaint of abuse, or whenever justice shall demand this course.

RULE XIII.

Local Transfer and Switching Charges.

Railroad companies shall furnish shippers cars for loading, and shall also accept from each other cars loaded at warehouses or side tracks of one road for delivery at side tracks or warehouses on the other road within the space of two miles beyond the starting point. The railroad company furnishing the car and performing the initial movement may charge two and one half dollars per car.

RULE XIV.

When car is destined to a warehouse on a connecting line which requires switching, the company so receiving and delivering may charge $1.50 additional.

After car is placed for loading, the shipper shall load same within twenty-four hours therefrom, and consignee shall, when car is placed for unloading, unload same within twenty-four hours; otherwise the usual demurrage charges may be made.

By order of the commission:

FRANKLIN McNEILL, *Chairman.*

H. C. BROWN, *Clerk.*

Effective July 15, 1903.

EXHIBIT No. "9."

Southern Railway Company.

Telegram. Greensboro, N. C. Time filed 4:30 p. m.

P. R. Albright, Mgr.:

Your wire date the Greensboro Ice and Coal Company have
592 agreed to pay the car service which you may assess on the cars at Greensboro after you have investigated the matter and made charge.

W. E. C.

Bond.

NORTH CAROLINA, *Guilford County:*

Superior Court.

STATE OF NORTH CAROLINA on the Relation of the NORTH CAROLINA Corporation Commission and Greensboro Ice and Coal Company

against

SOUTHERN RAILWAY COMPANY.

Whereas, Southern Railway Company, the defendant, has appealed from the order of the corporation commissioners, overruling its exceptions to the order filed in the above entitled case, while pending before the North Carolina corporation commission:

Now, therefore, we, the Southern Railway Company, as principal, and A. B. Andrews, as surety, undertake, in the sum of two hundred and fifty ($250) dollars, that the defendant shall pay to the relators of the plaintiffs or either of them, all such costs and damages as shall be adjudged against it upon appeal.

SOUTHERN RAILWAY CO.,
By F. H. BUSBEE, *Att'y.*
A. B. ANDREWS.

WAKE COUNTY, *ss:*

A. B. Andrews, being duly sworn, doth say that he is worth the sum of five hundred dollars above his debts and liabilities and exemptions allowed by law.

A. B. ANDREWS.

Sworn and subscribed before me, this 11th day of January, 1904.

P. H. BUSBEE,
Notary Public.

[SEAL.]

593

Clerk's Certificate.

I, H. C. Brown, clerk of the North Carolina corporation commission, do hereby certify that the foregoing is a full, true and perfect transcript of the record in the case of State of North Carolina on the relation of the North Carolina corporation commission, upon complaint of Greensboro Ice and Coal Company, against the Southern Railway Company.

Witness my hand and official seal, this the 19 day of January, 1904.

H. C. BROWN,
Clerk North Carolina Corporation Commission.

NORTH CAROLINA, *Guilford County:*

Filed in office January 22, 1904.

JOHN J. NELSON,
Clerk Superior Court of Guilford County.

594 And at a term of the superior court begun and held for the county of Guilford, on Tuesday, February 16, 1904, before the Honorable Charles M. Cooke, judge presiding, the following record appears:

The defendant filed the following petition and bond:

Petition to Remove.

NORTH CAROLINA, *Guilford County:*

Superior Court, January Term, 1904.

STATE OF NORTH CAROLINA, on the Relation of the NORTH CAROLINA Corporation Commission and Greensboro Ice and Coal Company, Plaintiff,

against

SOUTHERN RAILWAY COMPANY, Defendant.

Petition for Order to Remove this Action to the United States Circuit Court for the Western District of North Carolina.

To the honorable the superior court of the county of Guilford, State of North Carolina:

Your petitioner, Southern Railway Company, respectfully showeth, that it is the defendant in the above entitled suit or proceeding, which was begun against it before the North Carolina corporation commission, and was transferred by appeal to the superior court

of Guilford county, North Carolina, and that an informal paper in the nature of a complaint has been filed in the said action, and that the defendant, your petitioner, files this petition at or before the time when it is obliged to answer or demur to the complaint in the said superior court, and at its first opportunity to make such motion.

That the matter in controversy therein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000).

That the said suit or proceeding is of a civil nature, and is a proceeding to assert and enforce the right of the Greensboro Ice and Coal Company to have the North Carolina corporation commission
595 order and direct your petitioner to deliver certain interstate shipments to the plaintiff, Greensboro Ice and Coal Company, and the matter actually in controversy involving the right of the defendant to manage its large interstate commerce without any interference on the part of the plaintiffs, largely exceeds the sum or value of two thousand dollars ($2,000).

Your petitioner further states that in the said above mentioned suit or proceeding there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to-wit, a controversy between your petition, which was at the commencement of this action, and still is, a citizen and resident of the State of Virginia, and is not and was not at the time this action began, a citizen and resident of North Carolina, and that the defendant is a corporation originally created by and under the laws of the State of Virginia, and was at the commencement of this suit, and still is, such; and the said North Carolina corporation commissioners and the Greensboro Ice and Coal Company, whom your petitioner avers were, at the commencement of this suit or proceeding, and still are, citizens of the State of North Carolina, some of whom, to-wit, Franklin McNeill and Eugene C. Beddingfield, are residents of the eastern district thereof, and Greensboro Ice and Coal Company and Samuel L. Rogers are citizens and residents of the western district, and that the plaintiff, Greensboro Ice and Coal Company, is a corporation originally created by and under the laws of the State of North Carolina, and was at the commencement of this suit, and still is, such; and that all of the said defendants and your petitioner are actually inte-ested in the said controversy.

And your petitioner offers herewith a bond with good and sufficient surety in the sum of five hundred (500) dollars for its entering in the circuit court of the United States for the western district of North Carolina, on the first day of its next session, a copy of the record in this action, and for paying all costs which may be awarded
596 by the said circuit court if said court shall hold that this action was wrongfully or improperly removed thereto, and for entering a special bail if such be required.

And your petitioner prays this court to proceed no further herein, except to make an order of removal and to accept the said surety and bond, and to cause the record herein to be removed into said

circuit court of the United States in and for the western district o North Carolina.

SOUTHERN RAILWAY CO.,
By F. H. BUSBEE, *Atty.*

STATE OF NORTH CAROLINA:

A. B. Andrews, being duly sworn, doth say that he is first vic president of the Southern Railway Company, the petitioner in th above entitled cause; that he has read the foregoing petition an knows the contents thereof, and that the matters therein stated ar true, except as to matters stated on information and belief, and a to th-se he believes it to be true.

A. B. ANDREWS.

Sworn and subscribed before me, this 9th day of January, 1904.
[SEAL.] H. W. MILLER.
Notary Public.

597 *Bond for Removal of this Cause to the United States Circui Court for the Western District of North Carolina.*

NORTH CAROLINA, *Guilford County:*

Superior Court, January Term, 1904.

STATE OF NORTH CAROLINA ON RELATION OF BOARD OF CORPORATIO Commissioners, Plaintiffs,
against
THE SOUTHERN RAILWAY COMPANY, Defendant.

Know all men by these presents, that the Southern Railway Com pany as principal, and A. B. Andrews as surety, are held and firmly bound unto Greensboro Ice and Coal Company and North Carolina Board of Corporation Commissioners, and all other persons whom it may concern, in the penal sum of five hundred dollars, for the pay ment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the said Southern Railway Company has petitioned the superior court of Guilford county, State of North Carolina, for the removal of a certain civil action therein pending, above mentioned, wherein State *ex rel.* North Carolina Board of Corporation Commissioners and Greensboro Ice and Coal Company are plaintiffs, and the Southern Railway Com pany is defendant, to the circuit court of the United States in and for the western district of North Carolina.

Now, if the said Southern Railway Company, your petitioner, shall

enter in the said circuit court of the United States for the western district of North Carolina on the first day of its next session a copy of the record in said action, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said action was wrongfully or improperly removed thereto, and shall also then appear and enter special bail, if special bail be requisite therein, and shall enter appearance of said Southern Railway Company in said court, then this obligation shall be
598 void; otherwise to remain in full force and effect.

Witness our hands and seals, this 9th day of January, 1904.

SOUTHERN RAILWAY CO., [SEAL.]
By F. H. BUSBEE, *Att'y.*
A. B. ANDREWS. [SEAL.]

WAKE COUNTY, *ss:*

A. B. Andrews, being duly sworn, saith that he is a resident of Wake county, North Carolina, and that he is worth double the sum specified in the above bond above all his debts and liabilities, and exclusive of property exempt by law from execution.

A. B. ANDREWS.

Sworn to and subscribed before me, this 9th day of January, 1904.

[SEAL.] H. W. MILLER,
Notary Public.

Approval of Petition and Bond.

NORTH CAROLINA, *Guilford County:*

Superior Court, January Term, 1904.

STATE OF NORTH CAROLINA ON THE RELATION OF THE NORTH CAROLINA Corporation Commissioners and Greensboro Ice and Coal Company, Plaintiffs,

against

SOUTHERN RAILWAY COMPANY, Defendant.

In this cause the petition and bond filed for the removal of the same are hereby approved and adjudged to be in due form, and the bond in point of security is likewise approved.

C. M. COOKE,
Judge Presiding.

599 It appearing to the court, by the statement of defendant's counsel, that the word "defendant," in the fourteenth line from the bottom of page 2 of the petition was a clerical error for "plaintiffs," the defendants were allowed to amend the same by inserting "plaintiffs" in lieu thereof.

His honor refused the motion to remove, and made the following order:

Judgment.

NORTH CAROLINA, *Guilford County:*

Superior Court, February Term, 1904.

STATE OF NORTH CAROLINA on the Relation of the NORTH CAROLINA Corporation Commission upon Complaint of Greensboro Ice and Coal Company

against

SOUTHERN RAILWAY COMPANY.

This cause coming on upon the record and the petition filed by the defendant for the removal of the suit to the United States circuit court for the western district of North Carolina, and accompanying bond, the said petition and bond being in due form, the court being of the opinion that the petition should have been filed before the North Carolina corporation commission, the prayer of the petition was refused, and the cause is retained in the superior court.

An immediate appeal from this order is allowed.

C. M. COOKE,
Judge Presiding.

600 To the foregoing order the defendant excepted, and gave notice of an appeal to the supreme court of North Carolina, in open court. Bond fixed at seventy dollars. The record, petition, bond and order constitute the case on appeal.

C. M. COOKE,
Judge Presiding.

Clerk's Certificate.

STATE OF NORTH CAROLINA, *Guilford County:*

I, Jno. J. Nelson, clerk of the superior court, do hereby certify the foregoing to be a true and correct transcript of the record in the case of the State of North Carolina on relation of the corporation commission on complaint of the Greensboro Ice and Coal Company against the Southern Railway Company, as the same is taken from and compared with the original record in this office.

Witness my hand and seal of said court, at office in Greensboro, on this the 19th day of February, A. D. 1904.

JNO. J. NELSON,
Clerk Superior Court.

601 *Exceptions to the Report of the Master. Filed Sept. 26th, 1904.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

GREENSBORO ICE & COAL COMPANY, FRANKLIN McNEILL, SAMUEL L. ROGERS and EUGENE C. BEDDINGFIELD, Defendants.

Exceptions to the Report of the Master.

I.

The plaintiff excepts to the finding of the master which holds as follows, "The amount of the loss or inconvenience to either party by actually placing the four cars in question upon the side or spur track, or, by failure to place the same, would not, and did not amount to $2000."

The grounds for this exception are that said finding is vague and indefinite, especially when connected with its context, and is inconsistent with the context and other findings of the master amongst which is the following "The right of Southern Railway Company to conduct its inter-state business at Greensboro to dispose of its rolling stock and to distribute it, and to refuse or permit its cars to be placed on private sidings according to its reasonable rules is of great value to them and amounts to many thousands of dollars far in excess of $2000."

The finding excepted to may mean that the actual physical loss or inconvenience to Southern Railway Company in placing said cars or the actual expense incurred in merely moving four cars of coal upon a spur track would not equal $2000. But if the placing of said cars involved the infraction and destruction of its reasonable rules and regulations which are absolutely essential to the conduct or its business then a right of Southern Railway Company is violated, the value of which right is far in excess of $2000.

601½ If this is the construction the master intended to be placed upon the finding excepted to, and Southern Railway Company contends that it is, then this exception is unnecessary and will be withdrawn, but it is now entered out of an abundance of caution.

II.

Southern Railway Company excepts to the finding of the master which holds "that the North Carolina corporation commission has not, so far as the testimony discloses, attempted to, interfere with the

business or management of the plaintiff company, except to the extent of requiring it to place the said four cars on the defendant company's siding, nor has defendant company asked any further interference with said business management. The extent of said interference will more particularly appear by the order made by the North Carolina corporation commission on Oct. 31, 1903."

The grounds of Southern Railway Company's exception to above findings are that said finding is contrary to the evidence and inconsistent with other findings made by the master.

The evidence discloses that the North Carolina corporation commission takes the position that the interstate commerce of Southern Railway Company, including the four cars in question, which are admitted and found to be interstate commerce by the master, are subject to the demurrage rules of the North Carolina corporation commission, governing car service and the said rules were attempted to be introduced in evidence by defendants in this case and the introduction of said rules was objected to on the ground of irrelevancy. (See p. 77 testimony.)

It thus appears that not only did the North Carolina corporation commission actually interfere with the interstate commerce of Southern Railway Company directly, by ordering the placing of the four cars of coal in question as found by the master, but said North Carolina corporation commission claims that demurrage rules made and promulgated by itself, apply to, govern and control all the interstate commerce business of Southern Railway Company in North Carolina, and it claims the power to supplant and supersede the reasonable rules and regulations adopted by Southern Railway Company for the management of its interstate business in North Carolina, and to
602 place the conduct of said interstate business under the control, and subject to the provisions of, rules and regulations made by the North Carolina corporation commission.

That the master should have held, not that it was the intention of the North Carolina corporation commission to order the placing of the four cars in question in this single instance only, never to be repeated again, but that it is the plain and express claim and intention of the North Carolina corporation commission to exercise absolute government and control in every instance over the interstate commerce of Southern Railway Company throughout the State of North Carolina, and to frame rules for the management thereof, which supersede the rules adopted by Southern Railway Company. That the North Carolina corporation commission insists that not only the four cars in question are subject to its rules and regulations and orders but all other cars and interstate commerce in like plight are subject to its rules, regulations and orders and that by ordering and requiring Southern Railway Company to place said four cars of coal in question, the North Carolina corporation commission directly interfered with interstate commerce of Southern Railway Company, which the master has found Southern Railway Company could not conduct

successfully except "under the reasonable rules and regulations of the company."

III.

Southern Railway Company excepts to the allusion or reference of the master at page 7 of his report to "the rules of the North Carolina corporation commission, which were placed in evidence and are annexed as part of this report."

The grounds of this exception to this ruling or allusion, are that at the time said demurrage rules of the North Carolina corporation commission were admitted to be introduced in evidence Southern Railway Company objected to the introduction because same are irrelevant and have no application to interstate commerce. See p. 77 testimony.

IV.

Southern Railway Company excepts to the following statement of the master at pages 8 & 9 of his report, "provided that the court shall hold upon the facts that it was not the duty of Southern Railway Company to place the said cars upon the said side track or
603 trestle of said coal company as it was requested to do."

The grounds for this exception are, that after the master had found that the demurrage was actually due on said four cars of coal in question on the 31st day of October 1903, the date of the commission's order and that demurrage was also due on Oct. 27, 1903, he should not have confused the findings of fact by accompanying it with a proviso as to the probable ruling of the court on a question of law.

V.

Southern Railway Company excepts to the finding of the master which reads as follows, "Had it ($146) been paid the four cars in question would, in the opinion of the master, have been delivered on the trestle of the ice & coal company as requested and refusal to so deliver was solely on that ground."

The master should have found as a fact that the refusal to place said cars on said side track was because the ice & coal company had declined to comply with the car service regulations adopted by Southern Railway Company, the observation of which is essential to the conduct of its business. That this finding of the master now excepted to was inconsistent with his findings to the effect that said car service rules of Southern Railway Company are reasonable and not made for the purpose of producing revenue, but are made in the interest of commerce and have been beneficial to the public as well as to the railroads.

Said finding is also inconsistent with the master's finding that the provisions of the said rules were well known to the Greensboro Ice & Coal Company and that one clause of said rules, well known to the ice & coal company expressly provides that "In case consignees or consignors refuse to pay or unnecessarily defer settlement of bills for

car service charges the railroads shall upon notice to that effect from the manager refuse to switch any cars for said consignees or consignors until said charges are paid."

As a matter of law these rules constitute a contract between the railroads and the consignee and as a matter of law the courts have universally held that it is to the interest of the public and essential for their convenience that the consignees must not dispute such
601 charges under the contract, but it is their duty to pay the same in the first instance and bring suit for recovery, if the railways have improperly collected same. That the situation is similar to a conductor collecting fares on a moving train. That it would be impracticable and impossible to carry on the business of transportation if every passenger declined payment of fare when demanded, and it is to the best interest of the public, to require the passenger to pay in the first instance and resort to the courts for redress in case of imposition, so that other members of the great public will not be inconvenienced and delayed by such dispute.

VI.

Southern Railway Company excepts to the finding of the master which holds that "said ice and coal company was solvent and was so known to Southern Railway Company."

The ground of this exception is that the fact (if it be a fact) is irrelevant as the law requires demurrage charges to be paid in the first instance by the consignee who is to resort to the courts for redress in case of imposition. That such a course is essential for the benefit of the public and for the orderly conduct of the railway business.

That the rights of other consignees and other members of the public are always considered in such controversies, and that no single individual is empowered under the law to impede the course of commerce and ignore the rights of other shippers and consignees by the precipitation of disputes of this character with railway companies and block the wheels of commerce while they are being settled.

VII.

Southern Railway Company excepts to the finding of the master which reads as follows, "that when the said four cars arrived the work upon the trestle had been completed and they were in good condition for delivery and for unloading of coal and was so known to the agents of the railway company which had control of placing cars."

The grounds for this exception are that the above fact, if it be a fact, is irrelevant. Notwithstanding the condition of the siding and trestle, where the same was complete or incomplete, Southern Railway Company was not bound to deliver any cars in the
605 event that the ice and coal company refused to comply with the rules and regulations of Southern Railway Company which the master has found to be reasonable.

Furthermore it is optional with Southern Railway Company to at any time cease to use and operate said private siding, and the finding excepted to is inconsistent with the finding of the master that the use of said side track is only "maintained by mutual consent."

VIII.

Southern Railway Company excepts to the finding of the master which reads as follows, "That at that time the said Southern Railway Company could have switched said cars on the said siding within 24 hours after their arrival and the ice & coal company could have emptied the coal from them and left them to the control of the railroad company within 3 hours after they were so switched, respectively."

The grounds for this exception are that said finding is irrelevant, and that it is immaterial whether or not cars could have been expeditiously loaded or unloaded on the private siding of the ice & coal company if the ice & coal company declined to comply with the rules and regulations of Southern Railway Company essential to the conduct of its business and essential to the welfare of the public and other shippers, which rules and regulations the master had found to be reasonable.

Furthermore it is optional with Southern Railway Company to at any time cease to use and operate said private siding, and the finding excepted to is inconsistent with the finding of the master that the use of said side track is only "maintained by mutual consent."

IX.

Southern Railway Company excepts to the finding of the master which reads as follows, "That it would in no way have interfered with the prompt, economical and easy handling of this or other freight or business for the Southern Railway Company to have placed the four cars as requested."

The grounds for this exception are that it is contrary to and inconsistent with other findings made by the master. The master has found and it is a fact, proved by the evidence and established by all the courts of the United States, that rules and regulations
606 governing the delivery and detention of cars engaged in the railway service of the United States, for the purpose of loading and unloading, are absolutely essential for the life of commerce and the public as well as of the railways.

It has been found by the master that the rules of the North Carolina car service association adopted by Southern Railway Company for the regulation of the use of the cars by shippers and consignees are well known to the Greensboro Ice & Coal Company.

That under these rules demurrage had accrued and was due and owing on the very four cars now in question. That the Greensboro Ice & Coal Company declined to pay said demurrage and have never

yet paid the same. That they declined even to pay the freight on said cars and did not pay the same until Oct. 27, and then only as the result of a letter from the North Carolina corporation commission acting as their counsel, advising them to do so.

The finding excepted to is thus inconsistent with the other findings of the master, and is contrary to the evidence, because it is plain that if these four cars of coal had been delivered the rules of the company would have been violated and set at naught, and the whole structure of its business threatened and interfered with, and the unbroken line of decisions throughout the United States protecting the railway companies in the management of their business would have been nullified, and the finding of the master, that the right of Southern Railway Company to conduct its business, State and interstate, according to its rules and regulations (found to be reasonable) is involved in this controversy and exceeds in value many thousands of dollars, would be rendered nugatory.

The finding excepted to is contrary to the evidence which shows that it is only by the strict observance of the rules of Southern Railway Company, that the prompt, economical and easy handling of its business, both State and interstate, can be brought about throughout the country and that these rules have served to reduce the detention of cars from 5 days to 1 1/5 days, greatly to the benefit of the public as has been found by the master.

607

X.

Southern Railway Company excepts to the finding of the master *with* holds "the trestle can, in the ordinary course of business, be used by Southern Railway Company for unloading freight consigned to the ice & coal company with ease and such freight can be unloaded there in less time than would be involved in unloading it elsewhere. It is easier to unload coal from the trestle of the ice & coal company than from the public team tracks.

The grounds for this exception are that said findings are irrelevant, and that it is immaterial how expeditiously cars may be handled on private sidings as far as the physical features are concerned. For the power to govern and control its business and to establish and use side tracks, or public depots or team tracks, according to its best interest and under its rules and regulations, made in the interest of the public, is of vital importance to Southern Railway Company, and if these are to be ignored the mere physical convenience is infinitesimally insignificant.

XI.

Southern Railway Company excepts to the finding of the master that "the extension was made by the Cape Fear & Yadkin Valley railroad at its own expense and upon oral agreement, at the instance of the said ice & coal company for its accommodation. The terms of the agreement do not appear."

The grounds for this exception are that there is nothing in the testimony to show that the extension was put in under any "oral agreement" or any other species of agreement.

XII.

Southern Railway Company excepts to all findings of the master which relate in any way to the 13 cars which arrived in Greensboro between the 9th and the 19th days of Sept. 1903.

The grounds for these exceptions are that said findings of fact are irrelevant and that all testimony in relation thereto was objected to when offered in evidence and motion was made to strike said testimony out, which motion is now renewed.

608 Subject to these exceptions and motion. Southern Railway Company excepts to the findings of the master with reference to said 13 cars, in so far as he omits to mention that one of the strongest reasons for not placing cars on the private siding between the 14th and 29th of Sept. 1903 was that in the opinion of its officers, use of said siding would have been dangerous not only, as the master says, to its equipment, but, as he has omitted to say also of the safety of the public.

W. A. HENDERSON,
CLAUDIUS B. NORTHROP,
F. H. BUSBEE.
Att'ys for So. Ry. Co.

609 *Order Setting Down Case for Trial. Filed Nov. 7th*, 1904.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY
v.
GREENSBORO ICE AND COAL COMPANY.
to-wit:

Order Setting Down Case for Hearing.

Upon motion of counsel for complainant and upon statement made by counsel that the time was agreeable to counsel for defendant, the case is set down for hearing upon bill, exhibits, answer, depositions, and report of special master on Friday November 18th.

THOS. R. PURNELL,
Judge U. S. Court.

610 *Opinion and Decree. Filed December 16th, 1904.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District
North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
GREENSBORO ICE & COAL COMPANY, FRANKLIN MCNEILL, SAMU
L. Rogers, and Eugene C. Beddingfield, Defendants.

Messrs. W. A. Henderson, C. B. Northrop and F. H. Busbee,
complainant.

Messrs. R. D. Gilmer, attorney general and R. H. Battle for
N. C. corporation commission, E. J. Justice, Esq., for the Gree
boro Ice & Coal Company.

This is a bill in equity to enjoin the defendants, from bringi
suits for penalties and damages by reason of the refusal of
complainant to place upon the trestle of the defendant ice and c
company, four certain cars, and a failure to comply with the ord
of the defendant commissioners of the North Carolina corporati
commission, to so place the said cars. The bill coming on to
heard, after argument by counsel, a restraining order was enter
and the same referred to the standing master to find the facts.

The following, omitting what is deemed unnecessary, are in su
stance the facts as found by the master.

The Southern railway is a corporation, created by, and existi
under the laws of the State of Virginia, and is a citizen and reside
of the said State. All the defendants are citizens and residen
611 of the State of North Carolina.

The right of the Greensboro Ice and Coal Company, or of a
individual shipper or consignee, to have cars transferred and switche
upon his private sidings, or spur track, irrespective of the rules a
regulations of the Southern Railway Company, involves the rig
of the Southern Railway Company to conduct its business, both Sta
and interstate. If all shippers or consignees in North Carolina ha
the right to have cars switched and placed according to their order
and irrespective of the rules and regulations of the Southern Railwa
Company, it would entail a loss to the Southern Railway Compan
much in excess of two thousand ($2,000) dollars. The right of th
Southern Railway Company to conduct and manage its interstat
business at Greensboro, N. C., and various stations in the said State
amounts in value to many thousands of dollars, far in excess of tw
thousand ($2,000) dollars.

The right of the Southern Railway Company to conduct its inter
state business at Greensboro, to dispose if its rolling stock and di

tribute it, and to refuse to permit its cars to be placed on private sidings, according to its reasonable rules, is of great value to them, and amounts to many thousands of dollars far in excess of two thousand ($2,000) dollars.

Every day between the hours of twelve noon and one thirty, the Southern Railway Company has, arriving at Greensboro, N. C., seven mail trains and four trains carrying interstate freight. All of these trains arrive about the same time and if the Southern railway was obliged to get a car out of one of these trains, or was obliged to place a car on a certain siding at a certain time between these hours under the orders and directions of the private shipper, or under the orders and directions of the North Carolina corporation commission, and irrespective of its own reasonable rules and regulations,
it would mean detention and delay and damages not only to
612 interstate freight, but the United States mail and passengers.

Ordinarily, during other hours except in cases of unusual congestion, which rarely occurs, cars can be placed on the said spur track and trestle within twenty-four hours of their arrival without interfering with the business of the railroad company, either State or interstate, and it does not inconvenience the railroad, or interfere with its track or business, to place cars on the said spur track and trestle, any more than it would on any other spur track, that is to say, that this can be done in due course of business and under reasonable rules and regulations of the company.

In the event of congested condition by reason of the number of flat cars shipped to Greensboro, such condition would be relieved to some extent by using the said spur track or siding of the ice and coal company, for the purpose of placing the said company's cars on the siding.

The Greensboro Ice and Coal Company does a business which involves a shipment to it of about two hundred cars per year, according to the testimony. It pays freight in the neighborhood of $15,000 per year.

The amount of the profits of the ice and coal company does not appear in evidence, but the business transacted largely exceeds the sum of two thousand ($2,000) dollars, the freight paid by the company being about fifteen thousand dollars ($15,000) per year. If the ice and coal company had to unload all of its freight on the team tracks other than the siding and trestle in question, the said company could not profitably conduct its buisness. The amount of loss or inconvenience to either party by actually placing the four cars in question upon the side or spur track or by failure to place the same, would not, and did not, amount to two thousand ($2,000) dollars.

The North Carolina corporation commission has not, so
613 far as the testimony discloses, attempted to interfere with the business or management of the plaintiff company, except to the extent of requiring it to place the said four cars on the defendant company's siding, nor has the defendant company asked any

further interference with said business management. The extent of said interference will more particularly appear by the order made by the North Carolina corporation commission.

On October 31st, 1903, the North Carolina corporation commission, upon complaint of the said ice and coal company, made an order requiring the Southern railway within forty-eight hours after service of said order to place four cars of coal consigned to the Greensboro Ice and Coal Company, on the private siding or spur track of the Greensboro Ice and Coal Company, at Greensboro, N. C.

One of said cars belonged to the Southern Railway Company, two were the property of the Norfolk and Western Railway Company and one of the property of the Chesapeake & Ohio Railway Company.

On all of said four cars, except the one belonging to it, the Southern Railway Company was obliged to pay the railway companies owning the cars, a per diem of twenty cents per day for each day such car remained on its line, after the expiration of the first three days subsequent to the receipt of the car on the rails of the Southern Railway Company.

Each foreign car which remains on the rails of another railroad company exceeding thirty days, subjects the delinquent road to a penalty of a dollar per day, until the car is returned to the road owning it.

Three of the cars, those not owned by it, were on the rails of the Southern Railway Company exceeding three days from the time they were received, and a per diem of twenty cents per car had to be paid by the Southern Railway Company. The four cars comprehended by the said order of the North Carolina corporation commis-
614 sion were loaded with coal in the States of Pennsylvania, West Virginia and Tennessee respectively, and each of said cars of coal was transported over lines of the Southern Railway Company and connecting lines, as one continuous uninterrupted journey through several different States to Greensboro, North Carolina.

At the time said order of said North Carolina corporation commission was made, and both prior and subsequent thereto, the said coal remained loaded on the cars in the original unbroken package in which it began its continuous uninterrupted journey from the State of Tennessee, West Virginia and Pennsylvania, and said coal and said cars were still in the possession of the Southern Railway Company undelivered to consignee.

It is admitted in the answer, and also upon the taking of testimony, that said four cars loaded with coal as aforesaid, and transported as above mentioned, were and are interstate commerce.

The Southern Railway Company declined to switch these cars upon the private siding or trestle of the ice and coal company, because it was claimed the latter company had refused to comply with the rules of the North Carolina car service association adopted by the Southern Railway Company to expedite the use of equipment in the public interest.

The general rules adopted by the Southern Railway Company,

known as rules of the North Carolina car service association, are reasonable, and their object is not to produce revenue, but to facilitate the distribution of equipment and the expeditious handling of freight and to that end to enforce an equal, reasonable and uniform charge for the detention of cars, when the cars are detained over the free time prescribed in the rules. They have had this effect, and have operated and do operate to the mutual benefit of the railroads and the public and have reduced the average time of detention of cars from five days to one and one-fifth days, and have in-
615 creased the number of cars available for public service.

The terms and provisions of these rules of the North Carolina car service association, adopted by the Southern Railway Company, were well known to the ice and coal company, which has done business under them for some years.

Among the provisions of said rules were the following:

"SEC. 1 of RULE 2. On commodities for unloading or loading forty-eight hours, two days free time will be allowed, except that Sec. 2, seventy-two hours will be allowed for unloading fertilizer, and the following commodities when in bulk only: cotton seed, cotton seed hulls, coal, coke, fertilizing material, grain, lime, tan-bark, and dressed lumber in box cars."

"SEC. 2 of RULE 2. In case consignees or consignors refuse to pay, or unnecessarily defer settlement of bills for car service charges, the railroads shall, upon notice to that effect from the manager, refuse to switch any cars for such consignees or consignors, until such charges are paid."

The Southern Railway Company, on October 12th, 1903, issued a notice to the ice and coal company that commencing at 12 noon, October 17th, 1903, it would only deliver cars on the public team tracks of the Southern Railway Company, at Greensboro, N. C.

After October 12th, 1903, and subsequent to receiving said notice, the ice and coal company ordered said four cars of coal, and caused them to start from their respective points of origin, and could have countermanded said order.

Said four cars of coal came on the yards of the Southern Railway Company at Greensboro, North Carolina, after October 17th, 1903. Proper notices were sent the said ice and coal company of their arrival, and the cars were marked up to the public team tracks of the Southern Railway Company at Greensboro, and actually placed thereon, and the delivery tendered to the ice and coal company. The ice and coal company declined to receive or unload said cars at any other point whatsoever except on their private siding or trestle.

The refusal to unload said cars was not because of any defect in the notices, but, because the ice and coal company required
616 and demanded that the said cars should be placed on their private track or trestle. Said four cars of coal reached Greensboro, North Carolina, between October 18th and October 22nd, 1903, and were placed on the public team tracks and there remained for the purpose of being unloaded by the ice and coal company until

November 2nd, 1903, when they were removed because they were blocking the team tracks and interfering with the public use thereof.

According to the rules of the North Carolina car service association, adopted by the Southern Railway Company, seventy-two free hours time is allowed for unloading cars, and these cars remained on the team tracks much more than seventy-two hours from the time they arrived (October 18th to 22nd, 1903) and the 31st of October, the date of the commission's order, and, therefore, when such order was passed, demurrage was actually due upon these four cars, "provided, that the court shall hold upon the facts that it was not the duty of the Southern Railway Company to place the said cars upon the said side track or trestle of the said ice and coal company, as it was requested to do." No demurrage has been paid by the ice and coal company. The said ice and coal company had first refused to pay freight on these four cars of coal unless the same were placed on their private siding.

On October 27th, 1903, upon receipt of letter of the North Carolina corporation commission, dated October 26th, 1903, and on account of said letter the ice and coal company paid the freight on the four car-loads of coal.

Said four cars having reached Greensboro between October 18th and 22nd, 1903, and seventy-two hours free time having expired long prior to October 27th, 1903, demurrage was due on said cars on October 27th, 1903, the date the freight was paid, "provided, the court shall hold upon the facts that it was not the duty of the Southern Railway Company to place the said cars upon the siding or trestle of the ice and coal company, as it was requested to do."

617 The notice of October 12th, 1903, declining to switch cars to the private siding of the ice and coal company, and the refusal to deliver the four cars in question, was alleged to have been based upon the refusal of the ice and coal company to "comply with car service regulations" etc.

The alleged refusal to comply with the said rules consisted in the refusal of the ice and coal company to pay an account for demurrage of some one hundred and forty-six dollars claimed to be due on certain thirteen cars previously delivered. This claim was denied on the part of the ice and coal company.

The ice and coal company was solvent and was so known to the Southern Railway Company.

When the four cars arrived the work upon the siding and trestle had been completed and they were in good condition for delivery and for unloading of coal, and was so known to the agents of the railway company which had control of placing cars.

At that time the Southern railway could have switched said cars on the siding within twenty-four hours after their arrival, and the ice and coal company could have unloaded the coal and left them to the control of the railway company within three hours after they were so switched respectively.

It would in no way have interfered with the prompt, economical,

and easy handling of this or other freight or business, for the Southern railway to have placed the four cars as requested.

The trestle can, in the ordinary course of business, be used by the Southern Railway Company for unloading freight consigned to the ice and coal company with ease, and such freight can be unloaded there in less time than would be required in unloading it elsewhere. It is easier to unload coal from the trestle of the ice and coal company than from the public team tracks.

About 1890 the ice and coal company leased the property upon which its plant is situated, and which embraces its yard, of
618 one W. D. McAdoo, who owned and now owns the same. The lease was renewed in 1899, and is still existing.

At the time of the first lease the Cape Fear and Yadkin Railroad Company had a short spur track extending from its main track to within three or four feet of the yard of said ice and coal company. It could accommodate only one car so as to be conveniently unloaded.

In the spring of 1891, or some time thereafter, the said track was extended within the yard of the ice and coal company so that in 1895 it had reached a point very near the boilers of said company.

The extension was made by the Cape Fear & Yadkin Valley Railroad Company at its own expense and upon oral agreement, at the instance of the said ice and coal company, and for its accommodation. The terms of this agreement do not appear.

In 1895 it was further extended by the ice and coal company. This was all done before the renewal of the lease of McAdoo and the purchase of the Cape Fear and Yadkin Valley Railroad Company by the Southern Railway Company.

Since the extension of said track into the yard of the ice and coal company, the Cape Fear and Yadkin Valley Railroad Company, and its successor, the Southern Railway Company, have been delivering cars over said track to the yard of the ice and coal company.

That part of the spur track outside of the yard of the ice and coal company, had also been used by the railway company for the purpose of shifting their cars, for holding dead cars, and in some instances, unloading for persons near the said track. There has been no objection to such use of said track by the ice and coal company.

The extension from the railway's right of way to the yard of the ice and coal company, passes over land belonging to W. D.
619 McAdoo and the Guilford rolling mills, and neither the Southern Railway Company, nor the ice and coal company have any legal right to use the same, there being no written grant of easement or license, the ice and coal company having only a right, under its lease from McAdoo, to ingress and egress for ordinary vehicles.

The use of said land has been by suffrance of the owners, and the said owners have made no objection, and taken no steps to prevent such use, and such use has been, and now is permitted, though once or twice the Secretary of the said mills has complained of it as a nuisance, and McAdoo has threatened to have compensation made him.

The ice and coal company desired to construct a trestle within its yard for the more convenient unloading of cars, and this involved the raising of the existing track and the moving of it, or a part of it a short distance, 10 or 12 feet south.

There was a grade of several feet from where, or near where the track left the railway right of way to the proposed trestle, so that the track was not only to be elevated within the yard, but also outside of it, the proposed removal still leaving the track to pass over the land of other parties above named. Application to make these changes was made to the Southern Railway Company about the first of September, 1903. The permission was granted, the agreement being that the ice and coal company should do the entire work at its own expense, including the grading, etc., except the removal and laying of the track, which the Southern Railway Company agreed to do, or supervise, when the work was ready, using their own iron (the same which was already there) and its spikes, etc. Plans were exhibited and agreed to, and the work commenced about the 8th or 9th of September, 1903, and completed about the 29th or 30th of September, 1903.

620 There was no written or expressed contract on the part of the Southern Railway Company in respect to the use of the said track, but considering all of the circumstances, induces the master to find, "that there was an implied agreement that said track should be adopted and treated, so far as the ice and coal company was concerned, as a track for the delivery of its cars upon its trestle, under the reasonable rules and regulations of the said Southern Railway Company, this implied agreement to continue so long as the said track was maintained by mutual consent."

It is admitted that during the period between the commencement and the completion of the work, no cars could be received or unloaded within the yard of the ice and coal company.

It is the custom of the Southern Railway Company, to construct private sidings for the use of shippers of large quantities of freight, but it is not the policy of the said railway to do so except under contract, the printed form of which is in evidence, such contract containing a provision securing the acquisition of necessary rights of way, etc.

There was a standing order on the part of the ice and coal company that its cars should be delivered upon its yard. There appears to have been no such standing order in respect to the delivery of cars on the spur track outside of said yard, except the request in respect to thirteen cars arriving after the beginning and before the completion of said work. There was no contract to deliver cars on the track outside of the yard.

This standing order was given to the agent after the track had been torn up in the yard and about the time of the beginning of the construction of the trestle.

In respect to the said thirteen cars it is claimed by the ice and coal company, that it designated this spur track outside of the yard

as a proper and accessible point of delivery, and that the complainant failing to comply, could not claim demurrage be-
621 cause of the failure or refusal of the said ice and coal company to receive them at any other point.

From the 9th to the 14th of September the said spur track was occupied by the Woodruff & Townsend cars, one of them from the 9th to the 11th, and the other from the 12th to the 14th. That the ice and coal company did not have the exclusive right or priority to have cars placed and unloaded on said spur track.

One of the thirteen cars arrived on September 9th, 1903, and two of them on September 10th, 1903, while the track was so occupied, the remaining ten arrived between the 14th and 19th of September, 1903.

The track had been spiked down on the 14th of September by the railway company as unsafe for their equipment, etc. After this date, the preponderance of testimony establishes that no other cars were put upon said track until the completion of the work on the 29th of September, certainly it was not generally used for the purpose of delivery and unloading.

The work commenced by excavating inside of the yard of the ice and coal company near the fence, and the rails were torn up inside and also several feet outside of the fence.

After a week or more the building of an embankment or "fill" was commenced outside of said yard, and some feet south of the existing track, preparatory to a removal of the rails on it, to a greater elevation, the dirt being taken from the excavation inside of said yard.

On the 14th of September, the end of the track, within several feet of the fence had been "jacked up," leaving the sills hanging. There was testimony tending to show that about or after the 14th, the "jacking up," or removal of the dirt from under the rails, extended some distance along the spur track, making it dangerous to put cars upon it. There was a fall of some feet towards the yard, necessitating the use of brakes, or 'chocking," the new track, when
622 completed, being a reversal of this grade some distance in order to meet the necessary elevation of the trestle. The work was being done by the ice and coal company, under its supervision and control, by its contractors, the Southern Railway Company having nothing to do with it, except to shift the rails to the new track when all was ready.

There was sufficient space on the track which had not been removed, to accommodate two cars, from where the track was first torn up several feet from the yard of the ice and coal company, and it was possible up to within two or three days of the completion of the work for the Southern Railway Company to have placed and unloaded cars upon it.

In not using the said track for delivery and unloading of cars within that period, that is, from the 14th of September to within two or three day of its completion, the Southern Railway Company

exercised a reasonable degree of prudence in respect to the safety of its equipment and the orderly conduct of its business.

The ice and coal company requested the Southern Railway Company to place these cars on the spur track outside of the fence, and designated no other place for delivery. The Southern Railway Company, after such request and designation, did not actually place any of the thirteen cars, except perhaps one or two, at an accessible point of delivery. The request was not for each car, but a standing order given to an agent of the Southern Railway Company, and but once.

The ice and coal company never designated any other point, except upon the said spur track.

There were other team tracks of the Southern Railway Company where the unloading of coal would have been feasible, (and the Greensboro Gas Company and many others unloaded coal from them,) though not as convenient and inexpensive as the said side track. The unloading on the team tracks would render the business of the ice and coal company unprofitable.

623 There were several coal bins and chutes on the public tracks, but these could not always be relied upon, owing to the demands of other shippers. The bins were filled at the time covered by this controversy. The notices of the arrival of all of said cars did not contain the weight, or amount of charges.

The North Carolina corporation commission threatened to institute suits against the Southern Railway Company for heavy penalties on account of any failure to obey the order of October 31st, 1903, made by said commission.

The said ice and coal company threatened to institute suit against the Southern Railway Company for heavy penalties and damages on account of failure to obey said orders.

There does not appear to be any substantial conflict of testimony as to the nature of the proceedings had before the North Carolina corporation commission. It appears that on the 20th of October, 1903, a letter from M. W. Thompson, on behalf of the ice and coal company, addressed to the said commission, was received by them. It was in the form of a letter, and the formal requirements of the rules of practice of said commission as to sections, the numbering of the same, etc., were not observed.

The commission, treated the letter as a complaint but did not serve any formal notice upon the Southern Railway Company, or its agents.

On the 26th of October, 1903, the commission "phoned" the manager of the car service association, to come to its office. The answer was that he was not in the city, and the commission then requested that he come to the office of the commission upon his return.

Some days after, the first vice president of the Southern Railway Company, visited the office of the commission upon other business, and after this was concluded, this matter (the subject of Mr. Thompson's letter) was mentioned to him.

624 On the return of the manager of the car service association, he went to the office of the commission. The *the* letter

of Mr. Thompson was read, or its contents made known to him, and the matter was discussed.

Then follows conversations which took place with the corporation commission, which are not deemed pertinent or competent testimony.

The proceedings in the corporation commission "were not in conformity with the rules of practice of the commission, and the commission did not follow them strictly except in formal matters."

No witnesses were sworn in this matter, nor any issue joined by a pleading, nor any other hearing, except in a conversational way, first with one and then another representative of the different corporations.

On November 3rd, exceptions were filed to the order of the corporation commission. The hearing of these exceptions was had on November 12th, 1903, at Greensboro, when witnesses were examined, and arguments made by counsel.

On December 10th, 1903, the commission made an order overruling the exceptions.

To the report of the standing master, complainant filed twelve exceptions. Defendants filed no exceptions.

The fifth exception is to the finding of the master that had the $146.00 demurrage been paid the four cars in question would in the opinion of the master have been delivered on the trestle of the ice and coal company as requested and refusal to so deliver was solely on that ground.

This exception is sustained.

Twelfth exception is to the findings of the master, which relate in any way to the thirteen cars which arrived in Greensboro between the 9th and 19th days of September, 1903.

All testimony in relation to this finding was objected to
625 and motion made to strike out said testimony and the exception is now sustained, as the finding is irrelevant and it is shown in the testimony that to have switched the thirteen cars on the siding would have been dangerous to the equipment of the railroad company.

The $146.00 demurrage is not the question at issue in this cause, it may have been the origin of the litigation, but illustrates the truism 'that large oaks from little acorns grow.' This was a suit to restrain threatened irreparable wrong, and a multiplicity of suits for the penalties under the North Carolin statutes for non-compliance to the orders of the corporation commission. These penalties are matters of statute $500.00 per day and involve much more than two thousand dollars. If suit should be entered against the complainant for every day it has refused to obey the orders of the corporation commission made herein, and recognize its right to interfere with interstate commerce.

The other exceptions, except as noted above, are deemed immaterial. The cause was referred to the master to find and report the facts, which order, after hearing testimony, and asking counsel

to signify in writing what facts they desired found. he has fu complied with in an able and satisfactory manner.

It is admitted that the four cars loaded with coal, the basis of t whole controversy, were interstate commerce. This is a fact, th were interstate commerce and there is no controversy in rega thereto. Being interstate commerce, the question naturally aris when did these particular cars lose their character in this respe over which the North Carolina Corporation Commission has no jur diction, as recognized in the act of the legislature creating that bod

Until it ceased to be interstate commerce, Congress having leg lated and assumed to regulate such commerce under the provision the Constitution, no State regulations can apply.

G. C. & S. F. R. Co. *v.* Hefley, 158 U. S., 98.
G. C. & S. R. Co. *v.* Miami S. S. Co. 86 F. R., 407.
I. C. C. *v.* C. B. & Q. R. Co., 186 U. S., 320.

626. An article of interstate commerce remains wholly free fro such State control so long as it is in the original package.
Leisey *v.* Hardin, 135 U. S., 100.
Austin *v.* Tenn., 179 U. S., 343.
McGwigan *v.* R. R., 95 N. C., 428.
Emert *v.* Missouri, 156 U. S., 321.
Scott *v.* Donald, 165 U. S., 95 & 102.
Rhodes *v.* Iowa, 170 U. S., 458.
Schellenberger *v.* Pennsylvania, 171 U. S., 12-22.

In the cases cited above from the 95 N. C., the opinion was delivered by the chief juctice, in which he says: "State interference with interstate commerce is absolutely forbidden, and the failure of Congress to take any action in the premises is an indication that such commerce shall remain unfettered and free, subject only to the common law. Passenger Cases, 7 How., 286; Hall *v.* DeCuir, 95 U. S., 485."

"We do not undertake to venture upon the field traversed by the court, further than to say that the consequences of an opposite view, that permits interfering by State legislation, would be mischievous in the extreme. If one State may interfere, so may every other through which the freight is to be carried, in respect to its own chartered companies, and a succession of hostile enactments might cripple and so embarrass the roads in carrying out the contract, as almost to destroy such commerce, and deprive the country of those beneficial arrangements for transporting from distant points, so general in use, and so conducive to the nation's prosperity and business. The former is, therefore, wisely committed to a single body, whose regulations may be harmonious and self-consistent."

But Congress has by legislation undertaken to regulate the matter by the act creating the Inter-state Commerce Commission. Having so legislated, the State could not legislate on the subject.

627 In Rhodes *v.* Iowa above cited, Justice White delivering the opinion of the court, it was held in an able discussion of

the question: "Moving such goods in the station from the platform on which they are put on arrival to the freight warehouse is a part of the interstate commerce transportation." In other words, that interstate freight retains its character as such until the actual delivery to the consignee takes place.

It will be noted that many of the cases cited, as well as the well known South Carolina Original Package cases, are in regard to the introduction of intoxicating liquors or oleomargerine into States having prohibitory statutes, and after the delivery of the opinion in this case, Congress passed the act of August 8th, 1890, 26th Statute, 313, in which it was provided, that intoxicating liquors should not be exempt from State statutes. This legislation was in the interest of the police powers of the States and conceded them the authority to regulate the introduction of inoxicating liquors, thus surrendering to the States a part of the recognized power vested in Congress, and this act has been held to be constitutional. There has been no concession of this nature in regard to other freight, such as coal, &c., and no question of the principle thus laid down that interstate commerce, except where such concession is made, retains its character as interstate commerce and can only be regulated by Congress.

But the right of the North Carolina corporation commission is claimed under the police power of the State and in the brief of counsel appears this quotation: "The corporation commission then being a constitutional body, with powers to enforce rules for the regulation of the operations of public, and quasi public corporations, under the laws of the State, cannot be enjoined from exercising police powers of which the execution is not in conflict with the Federal Constitution, or laws made under its delegated powers.

628 Express Co. *v.* R. R. Co., 111 N. C. 463.
Bagge *v.* R. R. Co., 109 N. C. 279.
Martin *v.* Hunter's Lessee, 1 Wheat. 326.
State Tax on R. R. Gross Receipts., 15 Wall. 284.
Reagan *v.* Mercantile Trust Co., 154 U. S. 413.

It is an oversight that counsel should have overlooked N. Y. *v.* Miln, 11 Peters 102, the original and leading case on this subject, and the numerous cases citing and affirming the same; what is known as the Passenger cases in 7th Howard, and to have noted the exception stated in the brief "is not in conflict with the Federal Constitution or laws made under its delegated powers." An examination of all the authorities cited show that this exception is uniformly made and it seems the case at bar, conceding the principle laid down in authorities cited to be correct, falls under the exception. In the original case in 11 Peters, which is cited in most of the other cases and the cases cited thereunder in Russell & Winslow's Syllabus Digest, the exception stated in the brief is uniformly made and Congress having legislated upon this subject of interstate commerce, the State cannot legislate thereon. To do so, would be in conflict with both the Constitution of the United States and the acts of Congress

passed in pursuance thereof. The police power applies more particularly to passengers and to other matters which affect public health, convenience and morality, neither of which seem to be involved in the delivery of four cars of coal brought from one State into another.

The defendant coal & ice company was not without its remedy. The Interstate Commerce Commission hears and decides just such questions as were involved in this controversy. Lawyers frequently make mistakes as to what courts have jurisdiction, which gives rise to the numerous decisions on the subject of the jurisdiction of the courts, of which the books are full. This defendant has made the common mistake of getting into the wrong tribunal, as Congress has by constitutional enactment placed in the hands of the Inter-
629 state Commerce Commission the regulation of interstate commerce, as it has full authority to do under the Constitution of the United States.

In the case at bar, the jurisdiction of this court is strenuously questioned, and was ably argued by the counsel on both sides. It is contended by defendants that this is a suit against the State, and the State being a necessary party the bill should be dismissed; and it should further be dismissed because the amount involved does not exceed $2,000, exclusive of interest and cost. Numerous authorities are cited for the position taken by opposing counsel.

As to the contention of McNeill, Rogers and Beddingfield, that this is a suit against the State of North Carolina, the case of Scott *v.* McDonald, 165 U. S. 107, in which a great many of the authorities are col-ated seems to be decisive of this question. At page 112, the court says:

"The objection to proceedings against State officers by injunction are that it is, in effect a proceeding against the State itself, and it interferes with the official discretion vested in the officers. The answer to such objections is found in the long line of decisions of this court. Osborn *v.* Bank of U. S., 22 U. S., 9 Wheat., 738 (6:204); Dodge *v.* Woolsey, 59 U. S., 18 How., 331 (15:401); Louisiana Board of Liquidation *v.* McComb, 92 U. S., 531 (23:623); Cummings *v.* Merchants Nat. Bank, 101 U. S., 153 (25:903); Memphis & L. R. R. Co. *v.* Berry, 112 U. S., 609 (28:837); Poindexter *v.* Greenhow (Va. coupon cases) 114 U. S., 295 (29:194); Allen *v.* Baltimore & O. R. Co., 114 U. S. 315, (29:201); Pennover *v.* McNaughty, 140 U. S., 1 (35:363); Belknap *v.* Schild, 161 U. S., 10, (40:599, 602).

The opinion in the original case on this subject, Osborn *v.* Bank of U. S., *supra*, was delivered by Chief Justice Marshall; the eighth syllabus of which is:

"As the State itself cannot according to the 11th amendment of the Constitution, be made a party defendant to the suit, it may be maintained against the officers and agents of the State, who are in-
630 trusted with the execution of such laws.

The Chief Justice said in the above case:

"The objection is that, as the real party cannot be brought

before the court, a suit cannot be sustained against the agent of that party; and cases have been cited to show that a court of chancery will not make a decree, unless all those who are substantially interested be made parties to the suit. This is certainly true, where it is in the power of the plaintiff to make them parties; but if the person who is the real principal—the person who is the true source of the mischief, by whose power and for whose advantage it was done—be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him could his principal be joined in the suit."

The principle enunciated has been cited and affirmed in a number of cases, too numerous to cite. There have from time to time been dissenting opinions, but the Supreme Court has held strictly to the principle laid down by the Chief Justice.

It is not unnatural that a body having the powers of a corporation commission should imagine itself the State, but it is in reality a mere agency of the State and may under the authorities be restrained from executing an unconstitutional act, or doing an unconstitutional thing under a constitutional act.

The purpose of this suit is stated in the opening of defendant's brief, as follows:

"The purpose of the bill is to properly enjoin the defendants The Greensboro Coal & Ice Company, McNeill, Rogers and Beddingfield, acting as the North Carolina corporation commission, from bringing suits for penalties or damages against complainant because of its failure to comply with its order of the said corporation commission as to placing four carloads of coal transported from other States, upon the spur track and trestle of the defendant company at Greensboro."

This purpose of the bill is properly stated in part, the suits were threatened, though denied in the verified answers, as shown in the evidence by a letter from the counsel of the coal and ice company and by a letter or telegram from the chairman of the corporation commission, and as found by the master. These suits would in-
231 volve more than two thousand dollars. It should be added the purpose of the bill was also to enjoin the corporation commission from compelling the complainant to switch to a consignee's private side track irrespective of the rules and regulations of the Southern Railway Company, and deny to it the right to conduct its business both State and interestate, which the master finds would entail a loss to the Southern Railway Company much in excess of two thousand dollars; the right of the complainant railway company to conduct its interstate business at Greensboro, to dispose of its rolling stock, and distribute it, to refuse to permit its cars to be placed on private sidings, according to its reasonable rules. The amount involved amounts to many thousand dollars, far in excess of two thousand dollars as found by the master.

True the corporation commission of North Carolina is, in words,

made a court of record, and it is conceded the circuit court of the United States cannot restrain a State court, but the corporation commission is vested with powers not judicial, some of which have been held to be legislative, some executive, and the restriction on the injunction of this court as to State courts does not apply, especially in as much as the acts complained of and asked to be enjoined are not judicial acts. As to these acts it is a State agency, not acting judicially.

Many interesting questions were discussed in the argument and in the briefs, which it is not deemed necessary to consider for the decision of the case at bar. From what has been said there appears all the elements necessary to give the circuit court of the United States jurisdiction.

The questions discussed in the argument are ignored without prejudice, and it is considered, ordered and decreed, that the restraining order heretofore entered be made perpetual. A decree will be drawn accordingly.

THOS. R. PURNELL,
U. S. Judge, &c.

632 *Final Decree. Filed April 10th. 1905.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
GREENSBORO ICE AND COAL COMPANY, FRANKLIN MCNEILL, SAMUEL L. ROGERS, and Eugene C. Beddingfield, Defendants.

This cause came to be heard on the eighth day of April and by consent adjourned over to April 10th A. D. 1905, before the Hon. Thomas R. Purnell holding the circuit court of the United States for the eastern district of North Carolina upon the pleadings and proofs on file, and the report of the standing master with complainant's exceptions thereto, and stipulations and arguments of counsel.

From the consideration of all of which the court is of the opinion and doth consider, adjudge and decree as follows:

I.

This is a controversy between citizens of different States and is also a controversy arising under the Constitution and laws of the United States.

II.

The matter in dispute in this cause, exclusive of interest and costs, xceeds the sum or value of $2,000.

III.

Southern Railway Company, the complainant, is a corporation eated by and existing under the laws of the State of Virginia and is citizen and resident of said State.

Greensboro Ice and Coal Company, Franklin McNeill, Samuel L. gers and Eugene C. Beddingfield, defendants in this cause are each and all of them citizens and residents of the State of North Carolina.

IV.

The right of the Greensboro Ice and Coal Company, or of any dividual shipper or consignee, to have a car transferred and tched upon his private sidings, or spur track, irrespective of the s and regulations of Southern Railway Company, involves the ht of Southern Railway Company to conduct its business, both te and interstate. If all shippers or consignees in North Carolina d the right to have cars switched and placed according to their ers, and irrespective of the rules and regulations of Southern lway Company, it would entail a loss to Southern Railway Com- y much in excess of $2,000. The right of Southern Railway mpany to conduct and manage its interstate business at Greens- , North Carolina, and various stations in the said State amounts alue to many thousands of dollars, far in excess of $2,000.

he right of Southern Railway Company to conduct its interstate ness at Greensboro, to dispose of its rolling stock and distribute nd to refuse or permit its cars to be placed on private sidings, rding to its reasonable rules, is of great value to it, and amounts any thousands of dollars far in excess of $2,000.

very day between the hours of twelve noon and one thirty, hern Railway Company, has arriving at Greensboro North Caro- seven mail trains and four trains carrying interstate freight, of these trains, arrive about the same time and if Southern Rail- Company was obliged to place a car on a certain siding at a cer- time between these hours under the orders and directions of the te shipper, or under the orders and directions of the North lina corporation commission, and irrespective of its own reason- rules and regulations, it would mean detention and delay and ges not only to interstate freight, but to United States mail and ngers. Ordinarily, during other hours except in cases of al congestion, which rarely occurs, cars can be placed on the said spur track and trestle within twenty-four hours of their arrival without interfering with the business of the rail- road company, either State or interstate and it does not incon-

venience the railroad company or interfere with its track or business, or place cars on the said spur track and trestle, any more than it would on any other spur track, that is to say that this can be done in the due course of business and under reasonable rules and regulations of Southern Railway Co.

In the event of congested condition by reason of the number of cars shipped to Greensboro, such condition would be relieved to some extent by using said spur track or siding of the ice & coal company, for the purpose of placing the said company's cars on the siding.

The Greensboro Ice and Coal Company does a business which involves a shipment to it of about two hundred cars per year. It pays freight in the neighborhood of $15,000 per year.

The amount of the profit of the ice and coal company does not appear in the evidence, but the business transacted largely exceeds the sum of $2,000, the freight paid by the company being about $15,000 per year. If the Greensboro Ice and Coal Company had to unload all of its freight on the team tracks other than the siding and trestle in question the said company could not profitably conduct its business. The loss to either party by placing the four cars on the side track or failure to do so would not and did not amount to two thousand dollars. This is not claimed by the court material.

The North Carolina corporation commission has not, so far as the testimony discloses, attempted to interfere with the business or management of the plaintiff company, except to the extent of requiring it to place the said four cars on the defendant company's siding, nor has the defendant company asked any further interference with said business management. The extent of said interference will more particularly appear by the order made by the North Carolina corporation commission.

635 On October 31st 1903, the North Carolina corporation commission, upon complaint of the said ice and coal company, made an order requiring Southern Railway Company within forty-eight hours after service of said order to place four cars of coal consigned to the Greensboro Ice and Coal Company, on the private siding or spur track of the Greensboro Ice and Coal Company, at Greensboro, North Carolina.

One of the said cars belonged to Southern Railway Company, two were the property of the Norfolk and Western Railway Company and one the property of the Chesapeake and Ohio Railway Company.

On all of said four cars, except the one belonging to it, Southern Railway Company was obliged to pay the railway companies owning the cars, a per diem of twenty cents per day for each day such car remained on its line, after the expiration of the first three days subsequent to the receipt of the car on the rails of Southern Railway Company.

Each foreign car which remains on the rails of another railroad company exceeding thirty days, subjects the delinquent road to a penalty of a dollar per day, until the car is returned to the road owning it.

Three of the cars, those not owned by it, were on the rails of Southern Railway Company exceeding three days from the time they were received, and a per diem of twenty cents per car had to be paid by Southern Railway Company. The four cars comprehended by the said order of the North Carolina corporation commission, were loaded with coal in the States of Pennsylvania, West Virginia and Tennessee respect*fully*, and each of said cars of coal was transported over lines of Southern Railway Company and connecting lines, as one continuous uninterrupted journey through several different States to Greensboro, North Carolina.

At the time said order of said North Carolina corporation commission was made, and both prior and subsequent thereto the said coal remained loaded on the cars in the original unbroken package in which it began its continuous uninterrupted journey respectively from the States of Tennessee, West Virginia and Pennsyl-
636 vania, and said coal and said cars were still in the possession of Southern Railway Company undelivered to consignee.

Said four cars loaded with coal as aforesaid, and transported as above mentioned, were and are interstate commerce.

Southern Railway Company declined to switch these cars upon the private siding or trestle of the ice and coal company because the latter had refused to comply with the rules of the North Carolina car service association adopted by Southern Railway Company to expedite the use of equipment in the public interest.

The general rules adopted by Southern Railway Company, known as rules of the North Carolina car service association are reasonable, and their object is not to produce revenue, but to facilitate the distribution of equipment and the expeditious handling of freight and to that end to enforce an equal, reasonable and uniform charge for the detention of cars when the cars were detained over the free time prescribed in the rules. They have had this effect, and have operated and do operate to the mutual benefit of the railroads and the public and have reduced the average time of detention of cars from five to one and one-fifth days, and have increased the number of cars available for public service thereby releasing cars for other use in commerce to the advantage of the general commerce of the country and the public.

The terms and provisions of these rules of the North Carolina car service association adopted by Southern Railway Company, were well known to the Greensboro Ice and Coal Company, one of the defendants in this cause, which company has done business under them for some years.

Among the provisions of the said rules were and are the following:

637 "SECTION 1, OF RULES 2. On commodities for unloading or loading forty-eight hours, two days free time will be allowed, except that sec. 2, seventy-two hours will be allowed for unloading fertilizer, and the following commodities when in bulk only;

cotton seed, cotton seed hulls, coal coke, fertilizing material, grain, lime, tan-bark, and dressed lumber in box cars."

SEC. 2 OF RULE 2. In case consignees or consignors refuse to pay, or unnecessarily defer settlement of bills for car service charges, the railroads shall, upon notice to that effect from the manager, refuse to switch any cars for such consignees or consignors, until such charges are paid."

Southern Railway Company, on October 12, 1903, issued a notice to Greensboro Ice and Coal Company that commencing at 12 noon, October 17th, 1903, it would only deliver cars on the public team tracks of Southern Railway Company at Greensboro, North Carolina.

Said four cars of coal came on the yards of Southern Railway Company at Greensboro, North Carolina after October 17th, 1903. Proper notices were sent the said Greensboro Ice and Coal Company of their arrival, and the cars were marked up to the public team tracks of Southern Railway Company at Greensboro and actually placed thereon, and the delivery tendered to the ice and coal company. The said ice and coal company declined to receive or unload said cars at any other point whatsoever except on their private siding or trestle.

The refusal to unload said cars was not because of any defect in the notices, but, because the Greensboro Ice and Coal Company required and demanded that the said cars should be placed on their private track or trestle. Said four cars of coal reached Greensboro, North Carolina, between October 18th and October 22nd, and were placed on the public team track and there remained for the purpose of being unloaded by the Greensboro Ice and Coal Company until November 2, 1903 when they were removed because they were blocking the team tracks and interfering with the public use thereof.

According to the rules of the North Carolina car service association, adopted by Southern Railway Company, seventy-two free hours time is allowed for unloading coal in bulk and these cars remained on the team track at Greensboro, North Carolina much more
638 than seventy-two hours from the time that they arrived (October 18th to October 22nd, 1903) and the 31st of October 1903, the date of the commission's order, and, therefore, when such order was passed, demurrage was actually due on these four cars. No demurrage has been paid by the Greensboro Ice and Coal Company. The said Greensboro Ice and Coal Company had first refused to pay freight on these four cars of coal unless the same were placed on their private siding.

On October 27th, 1903, upon receipt of a letter of the North Carolina corporation commission, dated October 26th, 1903, advising Greensboro Ice and Coal Company to pay the freight and on account of said letter Greensboro Ice and Coal Company paid the freight on the said four cars of coal.

Said four cars having reached Greensboro between October 18th and 22nd, 1903, and seventy-two hours free time having expired long

prior to October 27th, 1903, demurrage was due on said cars on October 27th, 1903, the day the freight was paid.

The notice of October 12th, 1903, declining to switch cars to the private siding of the Greensboro Ice and Coal Company, and the refusal to deliver the four cars in question, was based upon the refusal of the Greensboro Ice and Coal Company to "comply with car service regulations of Southern Railway Company." The coal and ice company was solvent and so known to Southern Railway Company.

When the four cars of coal arrived the work on the siding and trestle had been completed and they were in good condition for delivery and unloading coal and were so known to the agents of Southern Railway Company who had control of placing cars.

At that time Southern Railway Company could have switched said cars on the siding within twenty-four hours after their arrival and the Greensboro Ice and Coal Company could have unloaded the coal and left the cars to the control of the railway company within
639 three hours after they were so switched, respectively.

It would in no way have interfered with the prompt, economical and easy handling of this or other freight or business for Southern Railway Company to have placed the four cars as requested.

The trestle can, in the ordinary course of business, be used by Southern Railway Company for unloading freight consigned to Greensboro Ice and Coal Company with ease, and such freight can be unloaded there in less time than would be required in unloading it elsewhere. It is easier to unload coal from the trestle of the Greensboro Ice and Coal Company than from the public team track. The last three paragraphs are not deemed material but are found at the request of the defendant.

About 1890 the Greensboro Ice and Coal Company leased the property upon which its plant is situated and which embraces its yard, of one W. D. McAdoo, who owned and now owns the same. The lease was renewed in 1899, and is still existing.

At the time of the first lease the Cape Fear and Yadkin Valley Railroad Company had a short spur track extending from its main track to within three or four feet of the yard of the Greensboro Ice and Coal Company. It could accommodate only one car so as to be conveniently unloaded.

In the spring of 1891, or some time thereafter, the said track was extended within the yard of the Greensboro Ice and Coal Company so that in 1895 it had reached a point very near the boilers of said company.

The extension was made by the Cape Fear and Yadkin Valley Railroad Company at its own expense and upon oral agreement, at the instance of the Greensboro Ice and Coal Company, and for its accommodation. The terms of the agreement do not appear.
640 In 1895 it was further extended by the Greensboro Ice and Coal Company. This was all done before the renewal of the lease of McAdoo and the purchase of the Cape Fear and Yadkin Valley Railroad Company by Southern Railway Company.

Since the extension of said track into the yard of the Greensboro Ice and Coal Company, the Cape Fear and Yadkin Valley Railroad Company, and its successors, Southern Railway Company, have been delivering cars over the said track to the yard of the Greensboro Ice and Coal Company.

That part of the spur track outside of the yard of the Greensboro Ice and Coal Company, had also been used by Southern Railway Company for the purpose of shifting their cars for holding dead cars, and in some instances, unloading for persons near the track. There had been no objection to such use of said track by the Greensboro Ice and Coal Company.

The extension from the railway's right of way to the yard of the Greensboro Ice and Coal Company passes over land belonging to W. D. McAdoo and the Guilford rolling mills, and neither Southern railway nor Greensboro Ice and Coal Company have any legal right to use the same, there being no written grant of easement or license, the Greensboro Ice and Coal Company having only the right, under its lease from McAdoo to ingress and egress for ordinary vehicles.

The use of said land has been by sufferance of the owners, and the said owners have made no objections and taken no steps to prevent such use, and such use has been, and now is permitted, though once or twice the secretary of the said mills has complained of it as a nuisance, and McAdoo has threatened to have compensation made him.

The Greensboro Ice and Coal Company desired to construct a trestle within its yard for the more convenient unloading of cars, and this involved the raising of the existing track and the moving of it, or a part of it a short distance, 10 or 12 feet south.

641 There was a grade of several feet from where or near where the track left the railway right of way to the proposed trestle so that the track was not only to be elevated within the yard, but also outside of it, the proposed removal still leaving the track to pass over the land of over parties above named. Application to make these changes was made to Southern Railway Company about the first of September, 1903. The permission was granted, the agreement being that the Greensboro Ice and Coal Company should do the entire work at its own expense, including the grading, etc., except the removal and laying of the track, which Southern Railway Company agreed to do, or supervise, when the work was ready, using its own iron (the same which was already there) and its spikes, etc. Plans were exhibited and agreed to, and the work commenced about the 8th or 9th of September 1903 and was completed about the 29th or 30th of September 1903.

There was no written or expressed contract on the part of Southern Railway Company in respect to the use of the said track or siding, but considering all the circumstances there was an implied agreement that said track should be adopted and treated, so far as the Greensboro Ice and Coal Company was concerned, as a track for the delivery of its cars upon its trestle, under the reason-

able rules and regulations of Southern Railway Company, this implied agreement to continue so long as the side track was maintained by mutual consent and to be terminated at the will and option of said Southern Railway Company or Greensboro Ice and Coal Company.

It is admitted and is a fact, that during the period between the commencement and completion of the work no cars could be received or unloaded within the yard of the Greensboro Ice and Coal Company.

It is the custom of Southern Railway Company, to construct private sidings for the use of shippers of large quantities of
642 freight, but it is not the policy of said railway company to do so except under contract, the printed form of which is in evidence, said contract containing provisions securing the acquisition of the necessary rights of way, and for the termination of the contract in pursuance of stipulations therein contained etc.

There was a standing order on the part of the Greensboro Ice and Coal Company, that its cars should be delivered upon its yard. There was no contract to deliver cars on the track outside the yard.

That the Greensboro Ice and Coal Company did not have the exclusive right or priority to have cars placed and unloaded on said spur track.

The track had been spiked down by the railway company on the 14th of September as unsafe for their equipment, etc.

After this date the preponderance of testimony establishes that no other cars were put upon said track until the completion of the work on the 29th of September, certainly it was not generally used for the purpose of delivery and unloading

The work commenced by excavating inside of the yard of the Greensboro Ice and Coal Company near the fence, and the rails were torn up inside and also several feet outside of the fence.

After a week or more the building of an embankment or "fill" was commenced outside of the said yard, and some feet south of the existing track, preparatory to a removal of the rails on it, to a greater elevation, the dirt being taken from the excavation inside the yard.

On the 14th of September 1903, the end of the track within several feet of the fence had been "jacked up," leaving the sills hanging. There was testimony tending to show that about or after the 14th of September 1903, the "jacking up," or removal of the dirt from under the rails, extended some distance along the spur track, making it dangerous to place cars upon it. There was a fall of some feet towards the yard, necessitating the use of brakes or "cho-king," the new track when completed being a reversal of this grade some
643 distance in order to meet the necessary elevation of the trestle.

The work was being done by the Greensboro Ice and Coal Company, under its supervision and control, by its contractors, Southern Railway Company having nothing to do with it except to shift the rails to the new track when all was ready.

There was sufficient space on the track which had not been re-

moved to accommodate two cars, from where the track was first torn up several feet from the yard of the Greensboro Ice and Coal Company, and it was possible up to within two or three days of the completion of the work for Southern Railway Company to have placed and unloaded cars upon it.

In not using said track for delivery and unloading of cars within that period, that is from the 14th of September 1903, to within two or three days of its completion, about the 29th or 30th of September 1903 Southern Railway Company exercised a reasonable degree of prudence in respect to the safety of the public, its equipment and the orderly conduct of its business.

There were and are team tracks of Southern Railway Company at Greensboro on which these four cars were placed where the unloading of the coal, would have been feasible, (and the Greensboro Gas Company and many other- habitually unload coal from them,) though not as convenient and inexpensive as said spur track, or private siding of Greensboro Ice and Coal Company. The unloading on the team tracks would render the business of the Greensboro Ice and Coal Company unprofitable.

There were and are several coal bins and chutes on the public tracks, but these could not always be relied upon, owing to the demands of other shippers. The bins were filled at the time covered by this controversy. The notices of the arrival of all of said 644 cars, did not contain the weight or amount of charges.

The North Carolina corporation commission threatened to institute suits against Southern Railway Company for heavy penalties and damages on account of any failure to obey said order.

There does not appear to be any substantial conflict of testimony as to the nature of the proceedings had before the North Carolina corporation commission. It appears that about the 20th of October, 1903, a letter from M. W. Thompson on behalf of the Greensboro Ice and Coal Company, addressed to the said commission, was received by them. It was in the form of a letter, and the formal requirements of the rules of practice of the said commission as to sections the numbering of the same, etc., were not observed.

The commission treated the letter as a complaint but did not serve any formal notice upon Southern Railway Company, or its agents.

On the 26th of October 1903, the commission "phoned" the manager of the car service association, to come to its office. The answer was that he was not in the city, and the commission then requested that he come to the office of the commission on his return.

Some days after the first vice-president of Southern Railway Company visited the office of the commission upon other business, and after this was concluded, this matter (the subject of Mr. Tohmpson's letter) was mentioned to him.

On the return of the manager of the car service association, he went to the office of the commission. The letter of Mr. Thompson was read, or its contents made known to him, and the matter was discussed.

The proceedings before the corporation commission were not in conformity with the rules of practice of the commission, and the commission did not follow them strictly except in formal matters.

645 No witnesses were sworn in this matter, nor any issue joined by a pleading, nor any other hearing except in a conversational way, first with one and then another representative of the different corporations.

On November 3rd 1903, exceptions were filed to the order of the corporation commission. The hearing of these exceptions was had on November 12th, 1903, at Greensboro, North Carolina when witnesses were examined, and arguments made by counsel.

On December 10th, 1903, the commission made on order overruling the exceptions.

V.

It is further considered, ordered adjudged and decreed that *that* the fifth exception of complainant to the master's report be and the same hereby is sustained and that Southern Railway Company declined to switch, place and deliver said four cars of coal upon the private siding or spur track of the Greensboro Ice and Coal Company, because the Greensboro Ice and Coal Company had refused to abide by and comply with the reasonable rules and regulations of Southern Railway Company, known as the rules of the North Carolina car service association, and especially section 2 of rule 2 herein-before fully set out in this decree, which rules and regulations were adopted by Southern Railway Company, not for the purpose of revenue, but to facilitate and expedite the handling of freight and the use and distribution of equipment alike for the benefit of the public and Southern Railway Company, the observance of which rules and regulations are essential for the management of the business of Southern Railway Company and for the welfare of the public.

VI.

It is further considered, ordered adjudged and decreed that complainant's twelfth exception to the findings of the master be and the same is hereby sustained and that all testimony and findings of the master with reference to the 13 cars of coal which arrived at Greensboro, North Carolina between the 9th and 19th of September,

646 1903, be and are hereby expunged and ruled out as irrelevant.

It is further adjudged and decreed that to have switched the thirteen cars on the siding would have been dangerous to the public and the equipment of the railroad company.

VII.

It is further considered, ordered, adjudged and decreed that the right of Southern Railway Company to conduct its interstate business

at Greensboro, North Carolina, and elsewhere throughout the State of North Carolina under its reasonable rules and regulations is involved in this suit and that unless it is protected in this right it will suffer irreparable injury which could not be compensated in damages.

It is further considered, ordered, adjudged and decreed that unless defendants herein are restrained and enjoined they will bring a multiplicity of suits against Southern Railway Company for the recovery of penalties and damages growing out of its disobedience of the void orders of the defendants McNeill, Rogers and Beddingfield, dater October 31, 1903, and December 10th, 1903, and growing out of alleged violation by Southern Railway Company of the provisions of chapter 164 Public Laws of North Carolina 1899 and amendments thereto.

It is further considered ordered, adjudged and decreed that Southern Railway Company has a common defense to all of said threatened suits involving a question of law common to all of said suits and that said orders of said McNeill, Rogers and Beddingfield dated October 31, 1903 and December 10th 1903 are void and repugnant to the Constitution and laws of the United States and constitute a direct interference with interstate commerce.

It is further considered, ordered, adjudged and decreed that the rules of the North Carolina corporation commission promulgated in pursuance of subsection 26 of section 2 of chapter 164 Public Laws of North Carolina 1899 and amendments thereto, pur-
647 porting to authorize North Carolina corporation commission "to make rules governing railroads in the placing of cars for loading and unloading and in fixing time limit for the delivery of freights after same have been received by the transportation companies for shipment" are void in so far as said rules and regulations purport to govern and control interstate commerce, and it is further considered, adjudged ordered and decreed that said rules are wholly inapplicable to interstate commerce.

VIII.

It is further considered, ordered adjudged and decreed that the Greensboro Ice and Coal Company, its officers, agents, attorneys, employees and all persons whomsoever, be and are hereby perpetually enjoined and restrained from instituting or authorizing or directing any others to institute any suit or suits action or actions, against Southern Railway Company or any of its officers, agents employees founded and based upon its disobedience of the orders of the North Carolina corporation commission dated October 31 1903 and December 10, 1903, or for the recovery of any penalties or damages under and by virtue of any provisions of the act of the General Assembly of North Carolina, Public Laws 1899 chapter 164 and any and all amendments thereto, and under any other law and under and by virtue of any orders, rules or regulations of said defendants. Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield

acting as North Carolina corporation commission or any of them combined or their successors in office in so far as same relate to or purport to affect said four cars of coal or any other interstate commerce of Southern Railway Company in North Carolina.

IX.

It is further considered, ordered, adjudged and decreed that said defendants, Franklin McNeill, Sam L. Rogers and Eugene C. Beddingfield and each and all of them and any of them combined, and their successors in office, as members of said North Carolina
548 corporation commission are hereby perpetually enjoined and restrained from instituting or authorizing or directing any others to institute any suit or suits action or actions against Southern Railway Company or any of its officers, agents and employees founded and bases upon the disobedience by Southern Railway Company of said orders of said McNeill, Rogers and Beddingfield dated October 31, 1903 — December 10th, 1903, and they and their successors in office are each and all of them and any of them combined hereby perpetually enjoined and restrained from requiring, authorizing, permitting, requesting or inducing the attorney general of North Carolina or his successors in office to institute or bring any suit or suits on relation of North Carolina corporation commission or the recovery of any damages or penalties from Southern Railway Company by virtue of any provisions of the Act of the General Assembly of North Carolina, Public Law 1899, chapter 164 or any amendments to said act and each and all of them and any of them combined and their successors in office are hereby perpetually enjoined and restrained from attempting to apply the provisions of any rules, orders or regulations of the North Carolina corporation commission relating to the placing of cars for loading and unloading and fixing of a time limit for delivery of freight after same have been received by the transportation companies for shipment or any other rules or regulations of said North Carolina corporation commission to any equipment or any of the operations or transactions of Southern Railway Company while same are engaged in interstate commerce. And said defendants McNeill, Rogers and Beddingfield and their successors in office are hereby perpetually enjoined and restrained from in any wise interfering with any of the interstate commerce whatsoever of Southern Railway Company, or the receiving, delivering storage or handling thereof.

X.

549 It is further considered, ordered adjudged and decreed that upon discovery of any person or persons at present unknown Southern Railway Company who threaten to bring suit against Southern Railway Company for the recovery of penalties or damages for the breach of any order, rules or regulations of said North Caro-

lina corporation commission, directly interfering with interstate commerce of Southern Railway Company, that Southern Railway Company is hereby granted leave to file a petition in this cause and have said persons made parties to this suit and their names inserted and included in the injunction issued herein.

XI.

It is further considered, ordered, adjudged and decreed that a writ of injunction issue from this court perpetually enjoining defendants as aforesaid.

XII.

It is further considered, ordered, adjudged and decreed that Southern Railway Company recover of the Greensboro Ice and Coal Company, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield $629.75 costs of this cause including an allowance of three hundred and fifty dollars ($350) to the standing master for which execution will issue.

THOS. R. PURNELL,
U. S. Judge, &c.

April 10, 1905.

650 *Injunction Writ. Issued the 29th day of May, 1905.*

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh, Fourth Circuit. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
GREENSBORO ICE AND COAL COMPANY, FRANKLIN MCNEILL, SAMUEL L. ROGERS, and EUGENE C. BEDDINGFIELD, Defendants.

The President of the United States of America to the Greensboro Ice & Coal Company, Franklin McNeill, Samuel L. Rogers and Eugene Beddingfield, Greeting:

Whereas a final decree has been made and entered in the above entitled cause on the 10th day of April, 1905, now therefore we having regard to the matters therein ordered, adjudged and decreed do hereby command and strictly and perpetually enjoin you, the said Greensboro Ice and Coal Company, and your officers, agents, attorneys and employees, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield and your successors in office acting as North Carolina corporation commission, and each and all of you, and any of you combined from instituting any suit or suits, action of actions against Southern Railway Company or any of its officers, agents or

employees founded and based upon its disobedience of the orders of the North Carolina corporation commission dated October 31st, 1903 and December 10th, 1903, requiring Southern Railway Company to place certain four cars of coal on the private siding or spur track of the Greensboro Ice and Coal Company.

We do hereby also command and strictly and perpetually enjoin you and each and all of you and any of you combined from instituting any suit or suits, action or actions, or authorizing or directing to be instituted any suit or suits, action or actions under or by virtue of any of the provisions of the acts of the General Assembly of North Carolina, Public Laws, 1899, chapter 164, and any and all amendments thereto, and under any other law and under and by
651 virtue of any orders, rules or regulations of said Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield acting as North Carolina corporation commission or any of you combined or your successors in office in so far as same relate to or purport to effect said four cars of coal or any other interstate commerce of Southern Railway Company in North Carolina or elsewhere.

We do hereby further command and strictly and perpetually enjoin you and each and all of you and any of you combined and your successors in office as members of said North Carolina corporation commission from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against Southern Railway Company or any of its officers, agents or employees founded and based upon the disobedience of Southern Railway Company of said orders of said McNeill, Rogers, and Beddingfield dated Oct. 31st, 1903 and December 10th, 1903 and said McNeill, Rogers and Beddingfield and your successors in office are each and all of you and any of you combined, hereby strictly and perpetually enjoined and restrained from requiring, authorizing, permitting requesting or inducing the Attorney-General of North Carolina or his successors in office to institute or bring any suit or suits, action or actions, on relation of the North Carolina corporation commission for the recovery of any damages or penalties from Southern Railway Company by virtue of any provisions of the act of General Assembly of North Carolina Public Laws 1899, chapter 164, or any amendments to said act and each and all of you and any of you combined are hereby strictly and perpetually enjoined and restrained from attempting to apply the provisions of any rules, orders or regulations of the North Carolina corporation commission relating to the placing of cars for loading and unloading and fixing a time limit for delivery of freight after same may have been received by the transportation company for shipment or any other rules or regulations of North Carolina corporation commission to any equipment or any of the operations or transactions of Southern Railway Company while same are engaged in interstate commerce and you and each and all of you and
652 any of you combined are hereby commanded and strictly and perpetually enjoined and restrained from in any wise interfering with any of the interstate commerce of Southern Railway

Company or the receiving or delivering, or storage or handling thereof.

Hereof fail not, under penalty of the law thence ensuing.

Witness, the Hon. Melville W. Fuller, Chief Justice of United States of America, this 29th day of May 1905, and in the 129 year of the Independence of the United States of America.

Attest:
H. L. GRANT,
Clerk of the United States Circuit Court for Eastern District of North Carolina.
By GEO. L. TONNOFFSKI, *D. C.*

Injunction writ Returned May 31st. Endorsed "Received May 30th, 1905 and executed same sate by delivering a copy of this injunction to Hon. Franklin McNeill Cham. of the N. C. corporation commission at Raleigh, N. C. H. C. Dockery, U. S. M By. J. T. Sharp, O. D. M.

"Received May 31st 1905 Executed May 31st 1905 by delivering copy of the within injunction to M. W. Thompson secretary and treasurer of the Greensboro Ice and Coal Co. in person at Greensboro, N. C.

J. M. MILLIKAN,
U. S. Marshal.
By J. T. MILLIKAN,
Office Deputy Marshal.

This return filed June 1st, 1905.

653 *Petition for Appeal and Allowance. Filed July 15th, 1905.*

In the Circuit Court of the United States for the Eastern District at Raleigh.

THE SOUTHERN RAILWAY COMPANY, a Corporation, Complainant,
vs.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, and the Greensboro Ice and Coal Company, a Corporation, Defendants.

Petition for Appeal and Allowance.

The above named defendants, Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and the Greensboro Ice & Coal Company, conceiving themselves aggrieved by the order and decree entered on April 10th, 1903, in the above entitled proceedings and the injunction issued in pursuance thereof, do hereby appeal from the said order, decree and injunction, to the Supreme Court of the United States, and they pray that this appeal may be allowed; and

that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

R. D. GILMER,
R. H. BATTLE,
E. J. JUSTICE,
Solicitors for Defendants.

And now on July 8th, 1905, it is ordered that the appeal be allowed as prayed for.

J. C. PRITCHARD,
Circuit Judge.

654 *Assignment of Errors. Filed July 15th*, 1905.

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh.

THE SOUTHERN RAILWAY COMPANY, a Corporation, Complainant,
vs.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, and the Greensboro Ice and Coal Company, a Corporation, Defendants.

Assignment of Errors on Appeal.

And now, on this 8th day of July, 1905, come Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and the Greensboro Ice and Coal Company, by Hon. R. E. Gilmer, Attorney General, R. H. Battle, Esq., and E. J. Justice, Esq., their solicitors, and say that in the record and proceedings in the above entitled case and matter there is manifest error in this to-wit:

First. That the court found and decreed as follows:

"That the Southern Railway Company declined to switch these cars (referring to the four cars of coal which was the subject of the orders of the corporation commission of North Carolina, of dates October 31, 1903 and December 10th, 1903 upon the private siding or trestle of the ice and coal company because the latter had refused to comply with the rules of the North Carolina car service association adopted by the Southern Railway Company to expedite the use of equipment in the public interest."

The error being the reason found for the Southern Railway Company's failure and declination to switch the cars of the private siding; the evidence all being that the reason was the refusal of the said ice and coal company to pay $146.00 claimed by the Southern Railway Company from the Greensboro Ice and Coal Company to be due for demurrage on cars of coal formerly consigned to the latter company and which it denied that it owed.

655 Second. That the court overruled the report of the master in the respect following, and failed to find as the master found to-wit:

"That the alleged refusal to comply with said rules (meaning refusal of the ice and coal company to comply with the rules of North Carolina car service association) consisted in the refusal of said ice and coal company to pay an account for demurrage of $146 claimed to be due on certain thirteen cars previously deliver

Third. That the court further overruled the master and failed find as the master found in his report that,

"This claim was denied on the part of the ice and coal compa Had it been paid, the four cars in question, would, in the opinion the master, have been delivered upon the trestle of the ice and company as requested, and the refusal to deliver was solely on t ground."

Fourth. That the court found and decreed that,

"According to the rules of the North Carolina car service asso tion, adopted by the Southern Railway Company, seventy-two hou time is allowed for unloading coal in bulk, and these cars remain on the team track at Greensboro, N. C. much more than seventy-t hours from the time that they arrived (Oct. 18 to Oct. 22, 1903 and the 31st of October, the date of the commission's order, an therefore, when such order was passed, demurrage was actually d upon these four cars."

The error being the finding that "demurrage was actually due these four cars," and failing to find that it was the duty of th Southern Railway Company to place the said four cars on the pr vate siding of the Greensboro Ice and Coal Company as it had bee requested to do, and failing further to find that the Southern Rai way Company did not have the right to hold the four cars and tende them for delivery on the public team track of the Southern Railwa Company under the circumstances, and failing to find that as th Southern Railway Company wrongfully withheld the four cars from the private siding of the Greensboro Ice and Coal Company, n proper charges in the nature of demurrage accrued in favor of the Southern Railway Company while said cars were so withheld.

Fifth. That the court found and decreed,

"That said four cars having reached Greensboro between October 18 and 22, 1903, and seventy-two hours' free time having expired long prior to October 27, 1903, demurrage was due on said
656 cars on October 27, 1903, the day the freight was paid." The error being the decree that "demurrage was due on said cars on October 27, 1903, the day the freight was paid," and the failure of the court to hold and decree that it was the duty of the Southern Railway Company to place the said cars upon the siding or trestle of the Greensboro Ice and Coal Company as it was requested to do, and that demurrage did not accrue while the cars were withheld from such siding or trestle.

Sixth. That the court held and decreed.

"That the notice of October 12th, 1903, declining to switch cars on the private siding of the Greensboro Ice and Coal Company, and the refusal to deliver the four cars in question was based upon the

refusal of the Greensboro Ice and Coal Company to comply with car service regulations of the Southern Railway Company."

The error being the reason assigned for this finding and decree of the court, when it should have found and decreed that the reason of the Southern Railway Company for refusing to deliver said four cars in question was based upon the refusal of the Greensboro Ice and Coal Company to pay $146, alleged to be due on account of other cars of coal previously shipped over the lines of the Southern Railway Company to the Greensboro Ice and Coal Company, which other cars had been unloaded and returned to the Southern Railway Company and removed by the Southern Railway Company.

Seventh. That the court failed to find and omitted the finding of the master, to-wit:

"That the masters complained of by the ice and coal company have in no way been influenced by any interruption or threat of interruption by the owners of said land." (Meaning that the Southern Railway Company's refusal to place the said four cars was in no way caused or pretended to be caused or influenced by any interruption or threatened interruption of the privilege of the Southern Railway Company and the Greensboro Ice and Coal Company to use the land over which said siding of the latter passed.)

Eighth. That the court found and decreed.

657 "That there was no written or expressed contract on the part of the Southern Railway Company in respect to the use of the said track or siding, but considering all the circumstances there was an implied agreement that the said track should be adopted and treated, so far as the Greensboro Ice and Coal Company was concerned, as a track for the delivery of its cars upon its trestle, under the reasonable rules and regulations of the said Southern Railway Company, this implied agreement to continue so long as the said track was maintained by mutual consent, and to be terminated at the will and option of the said Southern Railway Company or the Greensboro Ice and Coal Company."

The error being and holding and decree to the effect that the Southern Railway Company, under the circumstances, it having caused the Greensboro Ice and Coal Company to spend money to construct this track and trestle under the instruction of officers of the Southern Railway Company and with some assistance from that company, could cease to use it at its option, when the court should have found that the Southern Railway Company was under an implied obligation and contract to continue to use this side track for the convenience of the Greensboro Ice and Coal Company and the Southern Railway Company, and that this could be done under reasonable rules and regulations and without interfering with the business of the Southern Railway Company, either interstate or intrastate; and the court should have held that the Southern Railway Company could not terminate said agreement without the consent of the Greensboro Ice and Coal Company.

Ninth. That the court omitted to find as the master found from

the evidence the following with respect to the proceedings had by before the North Carolina corporation commission, to-wit:

"He stated (referring to A. B. Andrews, first vice president of Southern Railway Company) that Mr. Albright (who was the m ager of the North Carolina car service association) had been Greensboro and investigated the matter and explained it to them."

And also failed to find as the master found with respect to this m ter as follows:

"Mr. Albright informed the commission that, as he understo the contents of the letter (referring to the letter of Mr. Thomps manager of the Greensboro Ice and Coal Company) had been refer to the general manager of the Southern Railway Company at Wa ington, D. C. he would have to receive instructions before proceedi with the case.

658 During the discussion Mr. Albright said he had been Greensboro and had investigated the matter fully, and then gave his version, claiming that the ice and coal company h not complied with the car service rules in that it owed the Southe Railway Company demurrage charges from some one hundred a forty ($140) to one hundred and forty-six ($146) which they h refused to pay. He did not deny the solvency of the ice and co company, admitted that the four cars were there and that they h been requested to deliver them on the siding of the ice and coal com pany.

Upon being asked whether there was any complaint as to with holding cars, or the abuse of cars on this track, he answered in th negative. Other matters were mentioned, and the commission tol him that they thought that upon his own showing, the cars ought t be placed.

He did not ask to continue the matter, or to have another hearing, nor did he say that there was any additional fact he wanted to prove He said the matter had been referred to General Superintendent Ackert, in Washington, that he had not heard from him, and that he would probably hear from him soon and have instructions. The com mission waited that day, the 29th and on the 30th Mr. Albright in formed them he had not heard from Washington, but was expecting to hear. On the 31st the commission not hearing anything further from Mr. Albright, made the order in question. The order was served upon Col. Andrews that day."

The court also failed to find as the master had found that, "On the 31st day of October, the day the order was made, Mr. Strong, repre senting the Southern Railway Company, as attorney, had a conver sation with Mr. McNeill, chairman of the commission, as to the time the order went into effect," etc.

Tenth. That the court decreed that the fifth exception of the com plainant to the master's report be sustained, and found and adjudged.

"That Southern Railway Company declined to switch place and deliver said four cars of coal upon the private siding or spur track of the Greensboro Ice and Coal Company, because the Greensboro Ice

and Coal Company had refused to abide by and comply with the reasonable rules and regulations of Southern Railway Company, known as the rules of the North Carolina car service association, and especially section 2 of rule 2 hereinbefore fully set out in this decree, which rules and regulations were adopted by Southern Railway Company not for the purpose of revenue but to facilitate and expedite the handling of freight and the use and distribution of equipment alike for the benefit of the public and Southern Railway Company, the observance of which rules and regulations are essential for the management of the business of the Southern Railway Company and for the welfare of the public."

and failed to find as the master had found as follows:

"Had it ($146) been paid the four cars in question would have been delivered on the trestle of the ice and coal company as requested, and the refusal to so deliver was solely on that ground."

The error being the decree and finding of the circuit court that the reason of the refusal of the Southern Railway Company to place the four cars, the subject of the commission's order, on the
659 private siding of the ice and coal company was because the Greensboro Ice and Coal Company had refused to abide by and comply with the reasonable rules and regulations of the Southern Railway Company known as the rules of the North Carolina car service association, and especially section 2 of rule 2, when there was no evidence that the ice and coal company had refused to abide by and comply with the said rules or any rules and regulations of the North Carolina car service association, and especially section two of rule two, and there is no evidence that the refusal of the Southern Railway Company to place the said four cars was for that reason or upon that ground, but all of the evidence was to the effect that the reason for the refusal to place the said four cars was as found by the master, to-wit: the refusal of the Greensboro Ice and Coal Company, to pay $146 which is alleged it did not owe.

Eleventh. That the court ordered, adjudged and decreed

"That complainant's twelfth exception to the findings of the master be and the same is hereby sustained and that all testimony and findings of the master with reference to the 13 cars of coal which arrived at Greensboro North Carolina between the 9th and 19th of Sept., 1903, be and are hereby expunged and ruled out as irrelevant. The error being the exclusion of this evidence and these findings of the master with respect to the said 13 cars of coal out of which the claim for $146 grew, the Southern Railway Company having refused to place the four cars which the North Carolina Corporation ordered it to place, as the evidence and the findings of the master show, because of the failure of the Greensboro Ice and Coal Company to pay this $146 claimed as demurrage on said thirteen cars.

Twelfth. That the court found and decreed as follows:

"It it further considered, ordered and adjudged and decreed that the right of the Southern Railway Co. to conduct its interstate business at Greensboro, N. C. and elsewhere throughout the State of

North Carolina under its reasonable rules and regulations is involved in this suit and that unless it is protected in this right it will suffer irreparable injury which could not be compensated in damages."

The error being the holding and decree of the court, "that the right
660 of the Southern Railway Company to conduct its interstate business under its reasonable rules and regulations is involved in this suit and that unless it is protected in this right it will suffer irreparable injury," when it appears from the evidence and from the findings of the master, and from the decree of the court.

"That when the said four cars arrived the work upon the said siding and trestle had been completed and they were in good condition for delivery and for unloading of coal and was so known to the agents of the railway company which had control of placing cars.

That at that time the said Southern railway could have switched said cars on the said siding within twenty-four hours after their arrival, and the Ice and Coal company could have emptied the coal from them and left them to the control of the railway company within three hours after they were so switched respectively."

and when all the evidence shows that it would in no way have interferred with the prompt, economical and easy handling of this or other freight or business for the Southern railway to have placed the four cars as requested, and that the Southern Railway Co. in the ordinary course of business could use the trestle for unloading freight consigned to the Greensboro Ice and Coal Company with ease, and such freight could be unloaded there in less time than it would be required in unloading it elsewhere; that it was easier to unload coal upon the trestle of the Greensboro Ice and Coal Company than upon the public team tracks and that the Greensboro Ice and Coal Company could not carry on its business profitably and unload its cars upon the public team track; and further, the evidence shows, and the findings of the master establish, that the corporation commission ordered the said four cars placed in such a way and under such circumstances as would not in any way interfere with the passenger train and handling of other business of the Southern Railway Company, and when it appears from the evidence and from the findings of the master, and should have appeared from the findings of the court, that the placing of the said four cars of coal would not in any way have interfered with interstate commerce or any commerce or business of the Southern Railway Company or of the Greensboro Ice and Coal Company.

Thirteenth. That the court found and decreed as follows:

661 "It is further considered, ordered, adjudged and decreed that unless defendants herein are restrained and enjoined they will bring a multiplicity of suits against the Southern Railway Company for the recovery of penalties and damages growing out of its disobedience of the void orders of the defendants, McNeill, Rogers and Beddingfield, dated October 31, 1903, and December 10, 1903 and growing out of alleged violations by Southern Railway

Company of the provisions of chapter 164 Public Laws of North Carolina 1899 and amendments thereto."

The error being the finding and decree that said orders of the North Carolina corporation commission are void orders, and the finding "that the defendants will bring a multiplicity of suits," there being no evidence to support this finding.

Fourteenth. That the court found and decreed as follows:

"It is further considered, ordered, adjudged and decreed that Southern Railway Company has a common defense to all of said suits and that said orders of said McNeill, Rogers and Beddingfield dated October 31, 1903 and December 10, 1903, are void and repugnant to the Constitution and laws of the United States and constitute a direct interference with interstate commerce."

Fifeenth. That the court found and decreed as follows:

"It is further considered, ordered, adjudged and decreed that the rules of the North Carolina corporation commission promulgated in pursuance of subsection 26 of section 2 of chapter 164 Public Laws of North Carolina 1899 and amendments thereto, purporting to authorize North Carolina corporation commission 'to make rules governing railroads in the placing of cars for loading and unloading and in fixing time limit for the delivery of freights after same have been received by the transportation companies for shipment' are void in so far as said rules and regulation purport to govern and control interstate commerce, and it is further considered adjudged, ordered and decreed that said rules are wholly inapplicable to interstate commerce."

The error being that the court found and decreed that the said rule of the North Carolina corporation commission is void in so far as the same is applicable to interstate commerce, when in fact and in law Congress has not undertaken directly or indirectly to control and regulate the placing of cars or loading or unloading and fixing time limit and placing cars on private sidings, and when the attempt of the North Carolina corporation commission to regulate and
662 control the Southern Railway Company with respect to the placing of cars on private sidings, and particularly its orders of October 31 and December 10th, 1903, is not an attempt and does not interfere with the handling and delivery of interstate commerce.

Sixteenth. That the court found and decreed as follows:

"It is further considered ordered adjudged and decreed tha- the Greensboro Ice and Coal Company its officers agents attorneys, employees and all persons whomsoever, be and are hereby perpetually enjoined and restrained from instituting or authorizing or directing any others to institute any suit or suits, action or actions against Southern Railway Company or any of its officers, agents or employees founded and based upon its disobedience of the orders of the North Carolina corporation commission dated October 31, 1903 and December 10th, 1903, or for the recovery of any penalties or damages under and by virtue of any provisions of the act of the General Assembly of North Carolina Public Laws 1899, chapter 164, and

any and all amendments thereto and under and other law and under and by virtue of any orders, rules or regulations of said defendants, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield acting as North Carolina corporation commission or any of them combined or their successors in office in so far as same relate to or purport to effect said four cars of coal or any other interstate commerce of Southern Railway Company in North Carolina."

Seventeenth. That the court found and decreed as follows:

"It is further considered, ordered adjudged and decreed that said defendant, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield and each and all of them and any of them combined, and their successors in office, as members of said North Carolina corporation commission are hereby perpetually enjoined and restrained from instituting or authorizing or directing any other to institute any suit or suits, action or actions, against Southern Railway Company or any of its officers, agents and employees founded and based upon the disobedience by Southern Railway Company of said orders of said McNeill Rogers and Beddingfield dated October 31, 1903, and December 10, 1903 and they and their successors in office are each and all of them and any of them combined hereby perpetually enjoined and restrained from requiring, authorizing, permitting, requesting or inducing the attorney general of North Carolina or his successors in office to institute or bring any suit or suits, on relation of N. C. corporation commission and the recovery of any damages or penalties from Southern Railway Company by virtue of any provisions of the act of the General Assembly of North Carolina, Public Law- 1899, chapter 164, or any amendments to said act and each and all of them and any of them combined and their successors in office are hereby perpetually enjoined and restrained from attempting to apply the provisions of any rules, orders or regulations of the North Carolina corporation commission relating to the placing of cars for loading and unloading and fixing of a time limit for delivery of freight after same may have been received by the transportation companies for shipment or any other rules or regulations of said North Carolina corporation commission to any equip-
663 ment or any of the operations or transactions of Southern Railway Company while same are engaged in interstate commerce. And said defendant- McNeill, Rogers and Beddingfield and their successors in office are hereby perpetually enjoined and restrained from in any wise interfering with any of the interstate commerce whatsoever of Southern Railway Company, or the receiving, delivering, storage or handling thereof."

Eighteenth. That the court decreed as follows:

"It is further considered, ordered adjudged and decreed that a writ of injunction issue from this court perpetually enjoining defendants as aforesaid."

Nineteenth. That the court decreed as follows:

"It is further considered, ordered adjudged and decreed that Southern Railway Company recover of the Greensboro Ice and Coal

ompany, Franklin McNeill, Samuel L. Rogers, and Eugene C. eddingfield costs of this cause including an allowance of three hun- red and fifty — ($350.00) to the standing master, for which exe- ution will issue."

This error being that the court failed to find and decree upon the vidence and finding of facts by the master, and also upon the find- ng of the judge, the complainant was not entitled to a decree for a erpetual injunction and for costs against the defendants, but that s bill should have been dismissed with costs decreed against it.

Wherefore, the defendants, Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and the Greensboro Ice and Coal Company, ray that the said decree be reversed and the said court be directed o enter a decree in accordance with the prayers in the answers of he defendants.

R. D. GILMER,
(*Attorney General for the State of North Carolina*),
R. H. BATTLE AND
E. J. JUSTICE,
Solicitors for Defendants.

864 *Bond on Appeal to the Supreme Court. Filed July* , 1905.

n the Circuit Court of the United States for the Eastern District of North Carolina. At Raleigh.

THE SOUTHERN RAILWAY COMPANY, a Corporation, Complainant,
vs.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, and the Greensboro Ice and Coal Company, a Corporation.

Bond on Appeal to the Supreme Court of United States.

Know all men by these presents, that we, Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and the Greensboro Ice and Coal Company, appellants, as principals and H. C. Brown as surety, are held and firmly bound unto the Southern Railway Company, a corporation, appellee, in the full and just sum of three hundred, ($300) dollars, to be paid to the said Southern Railway Company, its certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 30th day of June. In the year of our Lord, one thousand nine hundred and five.

Whereas, lately at a circuit court of the United States for the Eastern District of North Carolina, at Raleigh, N. C., in a suit pending in said court wherein the Southern Railway Company was complainant and Franklin McNeill, Samuel L. Rogers, Eugene C.

Beddingfield, and the Greensboro Ice and Coal Company, were defendants, a decree was rendered on April 10th, 1905 against the said defendants, Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and the Greensboro Ice and Coal Company, and the said defendants above named having obtained an appeal to reverse the decree in the aforesaid suit and a citation directed to the
665 said complainant, appellee, admonishing it to be and appear at the Supreme Court of the United States to be holden at the time in said citation mentioned.

Now, the conditions of the above obligation is such that if the said appellants—defendants, shall prosecute their appeal to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and effect.

FRANKLIN McNEILL, [SEAL.]
SAM L. ROGERS, [SEAL.]
E. C. BEDDINGFIELD, [SEAL.]
H. C. BROWN, [SEAL.]
——— ———. [SEAL.]

UNITED STATES OF AMERICA,
Eastern District of North Carolina, ss:

H. C. Brown, being duly sworn says that he is a resident of the State of North Carolina in the eastern district thereof, and has property situated in said State and district, and is worth in property so situated the sum of three hundred ($300) dollars over and above his homestead and personal property exemptions allowed to him under the laws of North Carolina, and above all his debts and liabilities.

H. C. BROWN.

Sworn to and subscribed before me, this 30th day of June, 1905.

H. L. GRANT.

The foregoing bond was duly executed and is approved by me. This 30th day of June, 1905.

J. C. PRITCHARD,
Circuit Judge.

666 *Citation. Filed July 15th, 1905.*

In the Circuit Court of the United States for the Eastern District of North Carolina, at Raleigh.

THE SOUTHERN RAILWAY COMPANY, a Corporation, Complainant,
vs.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, and The Greensboro Ice and Coal Company, a Corporation, Defendants.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Southern Railway Company, complainant, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the 7th day of August, 1905, in pursuance of a notice and allowance or appeal filed in the office of the clerk of the circuit court of the United States for the eastern district of North Carolina at Raleigh, in a case wherein Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and the Greensboro Ice and Coal Company are appellants, and the Southern Railway Company, a corporation, is respondent, and show cause, if any there be, why the judgment and decree mentioned in the petition for appeal should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this — day of June, in the year of our Lord one thousand nine hundred and five.

J. C. PRITCHARD,
Circuit Judge.

Citation returned endorsed. "Rec'd and executed July 15th, 1905 upon Col. A. B. Andrews by delivering a copy of this citation to J. W. Smith his chief clerk in the city of Raleigh. H. C. Dockery, U. S. M., by J. T. Sharp, O. D. M.

657 UNITED STATES OF AMERICA,
Eastern District of North Carolina:

In the Circuit Court. In Equity.

I, H. L. Grant clerk of the aforesaid court do hereby certify that the foregoing is a full true and perfect transcript of the records in the case of the Southern Railway Company, complainants against The Greensboro Ice and Coal Company, Franklin McNeill, S. L. Rogers, and E. C. Beddingfield, defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in the city of Raleigh, State of North Carolina, this 3rd day of August, A. D. 1905.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

H. L. GRANT,
Clerk Circuit C.

Endorsed on cover: File No. 19,872. E. North Carolina C. C. U. S. Term No. 370. Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and The Greensboro Ice & Coal Co., appellants, *vs.* Southern Railway Company. Filed August 11th, 1905. File No. 19,872.